

November 29, 2005



**[TRANSCRIPT  
November 29, 2005]**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Thomas Perez, President  
Phil Andrews  
Howard Denis  
Marilyn J. Praisner

George Leventhal, Vice President  
Michael Knapp  
Nancy Floreen  
Steven A. Silverman

Michael Subin

November 29, 2005



1 Council President Perez,  
2 Let's begin. Is Reverend Ginger Luke here from River Road Universalist Unitarian  
3 Church? Good morning. We're going to begin now. If people could rise.

4  
5 Reverend Ginger Luke,  
6 I'm Reverend Ginger Luke from River Road Unitarian Church. In the name of all that is  
7 holy and sacred, let us pray. We are thankful for the people of this Council, for the time  
8 and energy they offer each of us in this community. We are thankful that they attend to  
9 the minute details and to the expansive plans of the future. We are thankful that they  
10 are able to hear the many diverse voices of this community and to respect them all. May  
11 they receive in plenty, gifts of patience, discernment, wisdom and compassion. And may  
12 they begin this day holding the well-being of all of us in their hands and in their hearts.  
13 Amen.

14  
15 Council President Perez,  
16 Okay. Let's turn to Linda Lauer.

17  
18 Linda Lauer,  
19 The addition to the Consent Calendar today is to introduce a special appropriation to the  
20 Park and Planning Commission's FY '06 operating budget \$1,153,100 for the  
21 Development Review Division. Public hearing is scheduled for December 6th at 1:30.  
22 On the legislative session, there is an added Bill for introduction: Expedited Bill 40-05  
23 Minority-owned Business Purchasing Program - Extension of Sunset, sponsored by  
24 Councilmembers Praisner and Leventhal. Public hearing and action is scheduled for  
25 December 6th at 1:30. Thank you.

26  
27 Council President Perez,  
28 Thank you. We have another -- in terms of scheduling, we have another challenge this  
29 morning, which is a dear friend of many people on the Council passed away over the  
30 weekend and the service is this morning at 11:00 a.m. And a number of our colleagues  
31 have expressed an interest in going and I -- by 11:00 I expect us to be talking about the  
32 issue of water and sewer category changes in Private Institutional Facilities. And I think  
33 all of the requests we will be considering are places of worship, and I would assume  
34 that if anyone would appreciate the need for a little flexibility on a place of worship, it  
35 would be -- on a funeral, it would be place of worship. And so what we'll do is we will  
36 proceed this morning until 10:40 and then we will reconvene at 12:15 here, and we'll  
37 work through the lunch hour. I'm hopeful that we'll get through everything this morning  
38 through Agenda Item -- my goal at least is to get through Agenda Item 4 before we  
39 leave, and then we will reconvene at 12:15. I apologize for the inconvenience that  
40 creates. I'm sure you'll appreciate that we want to pay our respects in this context. So  
41 we'll reconvene and the 12:30 lunch meeting with Royce Hanson we can put off 'til the  
42 end of the day so that we don't -- so that we don't inconvenience further the people who  
43 are here for the discussion on water and sewer. So I apologize for that. Obviously  
44 wasn't something we expected. But I do want to give my colleagues who are -- who had



November 29, 2005

1 expressed an interest, the opportunity to do that. So that will be the schedule. We'll  
2 break at 10:40 and reconvene at 12:15 and work through the lunch hour so that we can  
3 get through the water and sewer category changes during then. Madam clerk, approval  
4 of minutes.

5  
6 Council Clerk,  
7 You have the minutes of November 8th, 14th, and 15th for approval.

8  
9 Unidentified,  
10 Move approval.

11  
12 Council President Perez,  
13 All those in favor? Unanimous among those present. No petitions. Turn to the consent  
14 calendar.

15  
16 Unidentified,  
17 Move approval.  
18 Second.

19  
20 Council President Perez,  
21 Moved and seconded. Ms. Praisner.

22  
23 Councilmember Praisner,  
24 Yes, on Item Number C, which is water and sewer category changes that are being  
25 done by a Consent Calendar, I had one request for some modification of the language  
26 as it relates to 04-A/CLO-05, the [INAUDIBLE]. It is conditional approval rather than  
27 approval, I support the Committee's recommendation. It says, "Pending Planning Board  
28 approval of a preliminary plan, including the sewer alignment for the property." I'd like it  
29 to say, "including the sewer alignment, which should minimize or address the  
30 environmental issues in a way that minimizes tree removal and avoids the stream  
31 crossing." Those are the issues that the Planning Board mentioned for us. So, if that's  
32 okay with the Committee, thank you very much for that opportunity. On the second item  
33 --I had another one, Mr. Perez, if you want me to continue.

34  
35 Council President Perez,  
36 Yes.

37  
38 Councilmember Praisner,  
39 On the introduction of the item on the Pre-K funding, Pre-K services. I know this is  
40 already gone through Committee and is coming up for action right after the public  
41 hearing. The one question that I had, though, is it appears that the -- there's a significant  
42 cost difference from a standpoint of the training that's associated. And so before or  
43 during the public hearing process, I liked to understand the rational for the significant



November 29, 2005

1 difference in costs associated with the request and the training program that's proposed  
2 by the school system. Thank you.

3  
4 Council President Perez,  
5 Mr. Denis.

6  
7 Councilmember Denis,  
8 Thank you, Mr. President. On Item D, the resolution regarding Montgomery County  
9 Public Schools' State funding request for school construction, I'd like to reiterate my  
10 thanks to Superintendent Weast for his comments and the position against surplussing  
11 the Seven Locks Elementary property at such time as that might become relevant. And  
12 by way of background, I'd just like to share with the Council that the FY '07 funding  
13 request proposed by the Superintendent does include \$5.5 million for the planning and  
14 construction of the Seven Locks replacement school at Kendale. The Council agreed to  
15 fund a replacement school rather than a modernization addition project premised on the  
16 belief that the replacement school was significantly less expensive than the combined  
17 cost of the modernization addition and gymnasium project. I am fine with allowing the  
18 project to remain on the list of requested projects, since we will need State funding for  
19 some Seven Locks project. However, I think it is critical to receive a more current cost  
20 comparison between the two options. Modernization addition versus the replacement  
21 school. Clearly, the cost of both projects have increased, but it's not clear how the costs  
22 of the two projects now compare. I would hate for the Council to set a precedent for  
23 replacing a school rather than modernizing and adding to a school unless it is truly a  
24 less expensive option. We need to be able to completely justify our decision to the  
25 community and to the State. The Council had previously approved a series of projects,  
26 a modernization, a classroom addition, and a gymnasium addition at Seven Locks that  
27 would accomplish the same goal. We must be certain that in the time of rising costs in  
28 which we are now living and limited State funding, that we are choosing options that  
29 meet our needs at the least cost. Thank you, Mr. President.

30  
31 Council President Perez,  
32 Mr. Leventhal.

33  
34 Councilmember Leventhal,  
35 Thank you, Mr. President. Regarding item A on Consent Calendar, I wish this special  
36 appropriation did not have to be introduced. I wish Montgomery County didn't have to  
37 play the chump again and step up to the plate again to compensate for the heartless  
38 failure of State Government to cover children in need. I realized that the rest of the State  
39 looks at Montgomery County as though we have an unlimited cash register and that  
40 they can continue to cut us and cut us and ignore our needs and that we will take care  
41 of it out of our own wallet. I wish that we didn't have to do this. But 1,200 children are  
42 going to lose health insurance as a result of the decision by Governor Ehrlich to revise  
43 the State Medicaid program and deny healthcare coverage to legal immigrants in this  
44 country who have resided here for less than five years, including children who are less

November 29, 2005



1 than five years old. I don't believe we can allow those 1,200 children, especially the  
2 youngest children who need to see a doctor frequently, to go without health insurance.  
3 So once again the Health and Human Services Committee is stepping up to the plate.  
4 Once again Montgomery County is gonna burden its own taxpayers to compensate for  
5 the failure of State Government to acknowledge our needs. We're just introducing this  
6 today, there's still time for the public, for the media and for State Government to come to  
7 its senses and to realize that denying health insurance to children legally resident in the  
8 United States is not good health policy. It's not good public policy. We're just introducing  
9 this special appropriation today. I hope it won't be necessary to pass it.

10  
11 Council President Perez,

12 Okay. All those in favor? Unanimous among those present. Let's turn to the next item on  
13 the calendar. Which is the District Council session. This is agenda item 3A: Zoning Text  
14 Amendment 05-20, Site Plans Approval - Amendments - Enforcement, sponsored by  
15 the County Council. We -- I wanted to thank my colleague Mike Knapp. We had a  
16 number of conversations with the Council staff relating to the OLO report and the draft  
17 for a number of recommendations contained therein. And what we wanted to do was get  
18 the ideas that were contained in the OLO report on the table for consideration along  
19 with a host of other legislative proposals that have been already introduced. And so, this  
20 staff draft that was -- and there's a cover memo from Mr. Faden that was prepared, is  
21 part of the package of reforms that will be heard, I believe -- I forgot the date of the  
22 hearing. It's January 17th. There are a host of bills that will be on the table that day. So,  
23 Ms. Praisner.

24  
25 Councilmember Praisner,

26 Thank you. I had sent Mr. Faden a couple of questions. And based on the dialogue that  
27 I will have with him -- based on that -- I may have some modifications to some of the  
28 language that is associated with notice, and terms like "structure other than a building,"  
29 and documents references to the fact that no other document can be incorporated  
30 within the decision or reference to document, making sure that that doesn't conflict with  
31 the reference that might be associated with a law, which is a document. So -- or could  
32 be construed as a document. But I'll be working with Mr. Faden to the extent I have  
33 some suggestions. Thank you.

34  
35 Council President Perez,  
36 Great. Okay. Mr. Knapp.

37  
38 Councilmember Knapp,

39 Thank you, Mr. President. I just want to thank you, thank Mr. Faden for getting this done  
40 quickly so we could actually get this introduced. And to Mrs. Praisner's point, the idea is  
41 to get it on the table, so we had a place to begin the discussion from. So I expect that  
42 we'll all have lots of points to add. And I hope that as we get this piece and I believe Mr.  
43 Faden has one more piece to add to this, that we will have this broadly circulated. I  
44 know there's a lot of community members that have spent a lot of time thinking about

November 29, 2005



1 this and hopefully they'll provide us a lot of input and feedback so we can incorporate  
2 that into this as well.

3  
4 Council President Perez,  
5 Okay. We have a resolution to establish a public hearing. All those in favor. Unanimous  
6 among those present. Let's turn to legislative session. Madam clerk, approval of  
7 Legislative Journal, any minutes?

8  
9 Council Clerk,  
10 You have the Journals of November 1st and 8th for approval.

11  
12 Council President Perez,  
13 Someone. Moved and seconded. All those in favor. Unanimous among those present.  
14 Introduction of bills. There's Expedited Bill 40-05 Minority Owned Business Purchasing  
15 Program Extension of Sunset. Ms. Praisner.

16  
17 Councilmember Praisner,  
18 Yes. I just wanted to explain this so folks understand. The Council -- the current  
19 Minority/Female/Disabled -- MFD -- owned business purchasing program sunsets on  
20 December 31st, 2005. We are waiting for legislation from the Executive. I don't know  
21 whether it's come, it's not -- it has come but there hasn't been time for staff with other --  
22 it must have come within the last few days. So that in order to introduce it, next week,  
23 have public hearing, have Committee worksessions, and have the discussion that  
24 needs to occur, we wanted to make sure we had a program in place. I discussed this  
25 with the Council President and Vice President and, as you can see, Mr. Leventhal has  
26 signed on as a co-sponsor. It would be my intent to have the public hearing and Council  
27 action on the bill at the same time, and that scheduled for next Tuesday, December 6th.  
28 So that we continue to have an MFD program in place while we work through the  
29 legislation, which the Executive has sent over, which, given the schedule of Council  
30 recess and the magnitude of the issue, which requires, as you all can imagine, careful  
31 consideration, cannot occur until the January time period, given the recess and  
32 schedule. Thank you.

33  
34 Council President Perez,  
35 I meant to say to please add me as a co-sponsor when I talked to you last week. Mr.  
36 Leventhal, did you want to...

37  
38 Councilmember Leventhal,  
39 No.

40  
41 Council President Perez,  
42 Okay. We'll do that next week. Okay. Calls of bills for final reading. Bill 36-04,  
43 Commission Human Rights Discrimination - Housing. Is Odessa Shannon or someone  
44 from the Office For Human Rights here? Well... Joe, how are ya? Can you get on the



November 29, 2005

1 horn and see if they're coming? I just assumed that any time we consider a bill affecting  
2 an agency, that the agency would be present and participating in the deliberations  
3 regarding the bill. Thank you. While we're waiting, let me turn to Mr. Leventhal.

4  
5 Councilmember Leventhal,

6 Thank you, Mr. President. The Health and Human Services Committee voted to  
7 approve Bill 36-04. Bill 36-04 expands the categories of lending activities that constitute  
8 discriminatory housing practices and increases the amount of damages that the Office  
9 of Human Rights may award. The bill also clarifies that individuals must not engage in  
10 discriminatory lending practices, requires the Commission to provide an annual report  
11 on discriminatory lending activity in Montgomery County to the Executive and Council.  
12 The bill includes language that establishes a process for the Office of Consumer  
13 Protection to follow, to ensure a timely response when complaints are received by that  
14 Office of discriminatory, predatory, or abusive lending, establishes that the Office of  
15 Human Rights must educate residents about discriminatory lending practices and work  
16 with the Commission for Women, the Office of Consumer Protection and other  
17 government or nongovernment agencies or organizations in this effort.

18  
19 Council President Perez,

20 Okay, we -- I wonder when they're going to be here. Okay. Well, we had a number of  
21 hearings on this bill and the bill is designed to -- first of all I want to start out by thanking  
22 Mr. Subin, Ms. Floreen. I know Mr. Subin will be here in a few moments. I spoke to him  
23 earlier this morning and he will be here shortly. The bill is designed to address a  
24 problem that is best illustrated by looking at a chart. You've had this chart before, but  
25 thought I would give it out again. This is a map of Montgomery County disaggregated by  
26 race. And on your left is areas where you have high concentration of minorities living in  
27 Montgomery County. On your right, which is in red, is the areas where you have high  
28 concentrations of subprime lending in Montgomery County. And I think there's an old  
29 adage that a picture tells 1,000 words. And what this picture tells us is that Montgomery  
30 County is really no different than America, which is to say that the American dream of  
31 home ownership is elusive enough in this County in the best of circumstances, but when  
32 you have the scourge of lending discrimination, it adds insult to injury for so many  
33 people in this County who are attempting to realize the American dream. And so the  
34 problem that we're trying to solve is a problem that's a very similar problem that we  
35 address week in and week out, which is the affordable housing crisis in Montgomery  
36 County. Making it accessible. We have this wonderful policy that was enacted before I  
37 got here. It's called a Housing Policy. Montgomery County, The Place To Call Home, a  
38 Housing Policy For Montgomery County, Maryland. It talks about our vision and on page  
39 1 part of that vision is no discrimination in choosing a place to live. There's a number of  
40 other references to making sure we put our best foot forward in the effort to ensure that  
41 every resident of Montgomery County has access to the American dream. And the  
42 challenge and the problem to which this was -- the bill was the solution was, again, the  
43 problem that too many residents in Montgomery County and it's disproportionately  
44 African-Americans and Latinos, are in the subprime market. Now, it's one thing that's

November 29, 2005



1 clear to point out is the subprime market -- not all subprime loans are predatory or  
2 discriminatory, but what's equally true is that discriminatory lenders and predatory  
3 lenders have found a beachhead in the subprime market, and that is the problem that  
4 we are seeking to address. We're seeking to address the problem by making County  
5 government a real player in the battle to combat lending discrimination. Right now you  
6 have a two-legged stool of Federal and State Government guarding our civil rights.  
7 Frankly, that sends chills up and down my spine, the notion that George Bush and Bob  
8 Ehrlich are minding the civil rights store. And so the essence of this bill was to create a  
9 structure in which County government, in particular our Office For Human Rights, would  
10 be an equal player in the battle to combat lending discrimination. No more power than  
11 State or federal authorities, but no less power. And so, we wanted to create a three-  
12 legged stool. I can't do much about the state leg and the federal leg. We had a hearing  
13 in which somebody came from State Government and we learned about what they're  
14 doing or not doing in Montgomery County. We learned, for instance, that there's nobody  
15 with a bilingual capacity at the State level to come in and investigate cases of lending  
16 discrimination, which means latinos who are victims of lending discrimination or French  
17 immigrants from Cameroon who are victims of lending discrimination are basically out of  
18 luck at the State level because they don't have the language facility to address them.  
19 Don't need to say much about what the Bush Administration is doing in the lending  
20 context, other than to say that this has not been a civil rights friendly administration. In  
21 addition, the courts have not been particularly friendly to civil rights. And so the purpose  
22 of our bill was to, again, assist our County Government by allowing the Office for  
23 Human Rights -- and I'm frankly dumbfounded that they're not here. I'm hopeful that  
24 they will be here soon. I hope Eric you can assist us in getting them there. This has  
25 been on the agenda for a while and I'm not quite sure why they're not here. But we  
26 wanted to assist in making local government a real player, because frankly, if you were  
27 a victim of lending discrimination, you wouldn't come to local government. That's not  
28 meant as a dig at anybody in local government. It's just that the statutory tools were not  
29 present to make it a credible threat to be in local government. Another thing we wanted  
30 to do in this bill was to make sure that we addressed the issue of what the hostile courts  
31 are doing by inserting civil rights insurance policy into this bill. What I mean by that is  
32 simply that there has been an effort in the judiciary, and this is what the nomination of  
33 Samuel Alito is about in large measure, to turn back the clock on civil rights. And one  
34 way you get around that in local governments is to make sure that you look at the plain  
35 language of statutes. That you have explicit language in there protecting victims of  
36 discrimination. And in particular, what that means at a local government level is that  
37 there are two ways to prove discrimination. You can show that somebody intentionally  
38 discriminated or, alternatively, you can show they had a facially neutral policy or  
39 practice in place which had a disproportionate adverse impact. That's called disparate  
40 impact theory. The Fourth Circuit has recognized it in lending cases. All circuits that  
41 have dealt with it have recognized it in lending cases. I believe it's nine or ten circuits,  
42 and part of the goal of this bill was to codify that language. That amounts to a civil rights  
43 insurance policy. The reason you want to codify that language is because right now  
44 there was agreement among the County Attorney, among our County Council Attorney,



November 29, 2005



1 and among attorneys that we had brought in who are fair housing experts, that we do  
2 have the authority -- implicit authority -- right now to pursue lending cases under a  
3 disparate impact theory. However, we do not explicitly have that in the statute. And the  
4 problem with having it implicitly and not explicitly was quite vividly illustrated during the  
5 Committee consideration. Because my friend and colleague Steve Silverman asked a  
6 very fair and appropriate question, which was, "Why do we need to codify disparate  
7 impact? What is the current state of the law? And why would codification be  
8 necessary?" And that was a very fair question. And we spent a lot of time discussing  
9 that question. And the answer we got from the County Attorney was that, indeed, we  
10 have the authority currently to prosecute cases under a disparate impact theory. The  
11 answer we got from our friends on the County Council was, indeed, we have the  
12 authority to prosecute cases under a disparate impact theory. The answer we got from  
13 housing advocates -- fair housing advocates -- was, indeed, the authority is implicit to  
14 prosecute these cases at which point the question was asked -- and it's a very fair  
15 question -- why is this necessary if we indeed have the authority? And the answer was  
16 provided by our friends in the banking industry who said, "We dispute that you have that  
17 authority. And, in fact, if you were to prosecute such a case at the Office for Human  
18 Rights under that theory, we would challenge your authority and we would take you up  
19 to the highest court, because we don't believe you have such authority." At which point I  
20 believe Mr. Faden responded that codifying the disparate impact theory as we did in the  
21 original bill would, quote/unquote, save us a trip to the Court of Appeals, because the  
22 first thing a court does when examining a question such as, "Do you have the authority  
23 to prosecute under a disparate impact theory?" The first thing they will look to is the  
24 plain language of the statute. The plain language of our Human Rights Ordinance  
25 currently is silent on that issue. And we are trying to make it very loud and clear. And  
26 that's what the original bill did. We are trying to make it loud and clear that, indeed, the  
27 authority exists to prosecute disparate impact cases. And so we made it explicit. We  
28 had a conversation in the Committee and the Committee majority voted to remove the  
29 language of disparate impact. I'll let them speak for themselves as to why they wanted  
30 to do that. We then had a discussion in the Committee at which point Mr. Dennis  
31 introduced a -- and I'm referring to Michael Dennis from the Office of Human Rights at  
32 Circle 200 -- I think it's Circle 200. Yes, Circle 200. Mr. Dennis from the Office of Human  
33 Rights offered language that I thought at the time was intended to address concerns  
34 that they had about making sure that disparate impact was not going to prevent them  
35 from prosecuting intentional discrimination cases. And so what you see on Circle 200 is  
36 an amendment that I offered at the -- after the original language was stripped by a  
37 majority of the Committee -- I offered this language, which was, again, not drafted by  
38 Tom Perez. It was drafted by Michael Dennis at the Office for Human Rights. Mr. Beach  
39 are they coming?

40  
41 Joe Beach,  
42 No, I'm afraid that Ms. Shannon's not available.

43  
44 Council President Perez,



November 29, 2005

1 Well, maybe we should postpone this until she is. This is a bill that affects her Office. I  
2 don't know that we've ever considered a bill before without the agency representative  
3 here. I'm a little bit stumped as to why that's the case. Did they not get the calendar?

4  
5 Joe Beach,  
6 I'm not sure why [INAUDIBLE].

7  
8 Council President Perez,  
9 That's -- that's remarkable, Joe. Well, maybe -- we can certainly postpone it until this  
10 afternoon. Is she going to be available this afternoon?

11  
12 Joe Beach,  
13 I have to check that out.

14  
15 Council President Perez,  
16 Okay. Why don't we do that. I mean, and part of the reason, Joe, that it would be useful  
17 to have her here is I'm referring right now to Circle 200. And it's the -- one of the  
18 questions we're going to be discussing here. I'm referring to an amendment that was  
19 drafted by the Office for Human Rights. I then am looking at another memo from  
20 Odessa which implies that they no longer agree with the language that they offered  
21 back in July. And so I'm frankly attempting to figure out what their position is today on  
22 this bill. I'm looking at an e-mail dated November 21 in which Odessa indicates that they  
23 do not want disparate impact included in the bill and she points out that adding new  
24 language will -- "if we add this language, then it may prohibit us from using disparate  
25 impact in employment cases or in rental cases or in public accommodation cases." So  
26 I'd really like to have that opportunity to discuss whether their position was as embodied  
27 in Circle 200, or whether their position is as embodied in this November 21 memo. And  
28 I'm regrettably, I am not Karnak, so I can't read their mind and figure out where they are.  
29 They, regrettably, have sent some mixed signals in terms of what their position is. So I'd  
30 appreciate if you could get back to us. There's a lot of people who came here today to  
31 listen to this debate and discussion and they all knew when the time was, and I would  
32 have thought that somebody could have come from the Office for Human Rights on a  
33 bill that directly affects their ability to prosecute cases that are critically important to  
34 many people in this County. I'm just really at a loss to understand why we don't have a  
35 critical stakeholder at the table.

36  
37 Joe Beach,  
38 I will try to see if I can have her available for this afternoon. Couldn't Council, even in the  
39 absence of their clarifying their position on it, couldn't Council resolve that among  
40 yourself?

41  
42 Council President Perez,  
43 I have questions for her that will affect the resolution of this. I mean, I'm trying to  
44 reconcile the memo, this e-mail of November 22nd.

November 29, 2005



1  
2 Joe Beach,  
3 I'm sorry. Is that in the packet.

4  
5 Council President Perez,  
6 No, it's not.

7  
8 Councilmember Leventhal,  
9 I have a copy, I'll be delighted to distribute it to Councilmembers, and to the audience  
10 and anyone else who wants to see it.

11  
12 Council President Perez,  
13 Absolutely. Trying to reconcile this e-mail with what they did, with what Michael offered  
14 back in -- here, Sonja, do you need this? And, you know, I don't think it's fair to ask you,  
15 Joe, because I have a feeling you wouldn't know the answers to the questions. And I  
16 don't like to put people on the spot who aren't in a position to -- who don't have the  
17 subject matter expertise. Well, no here.

18  
19 Unidentified,  
20 We can go back to the PIF vote.

21  
22 Council President Perez,  
23 Well, we can go to the PIF -- yeah, frankly, that's what I was thinking of doing. I'm just --  
24 I'm a little bit -- I feel badly for all the people who are here today expecting that at 9:30  
25 we were gonna take this issue up and we have nobody from the County Executive's  
26 Office who has decided to participate in this. I'm just -- I have never seen this happen.  
27 Every time we have a bill, regardless of the agency who is affected by the bill, they're  
28 always at the table. Eric, I don't want to put you on the spot because, while this bill will  
29 affect the Office of Consumer Affairs, it wasn't directly your bill. I think I would be asking  
30 you questions that would be unfair to put you on the spot on. Okay. Well, there's a curve  
31 ball for you. Let's put it off until -- we'll assume she's going to be here this afternoon.  
32 Well, we will go until 10:40 on the PIF policy and then we'll break until 12:15. I don't  
33 expect we'll finish the -- bless you. I don't expect we'll finish the PIF policy by 10:40, so  
34 let's say 2:00. Thank you. I apologize to folks who came here expecting to start at 9:30.  
35 I know everybody up here was ready; Mr. Leventhal, Mr. Silverman, everybody up here  
36 was ready to go. I don't think it's appropriate to proceed when the agency for whom I  
37 know I have some questions and who would enforce this is simply not here. So I very  
38 much apologize to those people who took time out of their busy schedules. Let's turn to  
39 the -- let's turn to Agenda Item Number 5.

40  
41 Councilmember Silverman,  
42 Where's Royce? Can we meet with Royce?

43  
44 Unidentified,



November 29, 2005

1 Okay.  
2  
3 Councilmember Silverman,  
4 That was amazing.  
5  
6 Council President Perez,  
7 Unbelievable.  
8  
9 Councilmember Silverman,  
10 I don't -- I don't understand that at all.  
11  
12 Council President Perez,  
13 So they've been a model of clarity throughout.  
14  
15 Councilmember Silverman,  
16 But how can they not send somebody?  
17  
18 [laughter]  
19  
20 Councilman Silverman,  
21 That's okay, Mike, it's safe to come in.  
22  
23 Councilmember Floreen,  
24 So, we're proceeding to number five, Mr. President?  
25  
26 Council President Perez,  
27 If I could just explain to Mr. Subin. Nobody from the Office of Human Rights came over,  
28 and so we were unable to have any dialogue about the bill. They're not available,  
29 nobody came over, Mr. Subin. We put this off until 2:00...  
30  
31 Councilmember Floreen,  
32 I'm for water and sewer.  
33  
34 Multiple Speakers,  
35 [INAUDIBLE]  
36  
37 Councilmember Silverman,  
38 I'm telling you we should start our meeting with Royce. Is Royce Hanson in the house?  
39  
40 Multiple Speakers,  
41 [INAUDIBLE]  
42  
43 Council President Perez,



November 29, 2005

1 Okay, we'll reconvene at 2:00 on this again. So let's turn to the water and sewer  
2 category changes. And turn it to the Chair of the T&E Committee.

3  
4 Councilmember Floreen,

5 Thank you, Mr. President. We did tell a few folks to go have a cup of coffee while we  
6 were discussing predatory lending, so I hope that staff can go down to the lunch room  
7 and round up any folks who seem to be under the impression that we were going to  
8 delay this item. Let me just say that when I told the "Washington Post" that my favorite  
9 movie was "Casablanca" last year, I was a little incorrect. My favorite movie really is  
10 "Chinatown" and that's because it's all about the water and the sewer. And here we are.  
11 We've been -- it's been just about a year that the issue of water and sewer in Ag  
12 Reserve has been presented full front and center here. Some people might say that the  
13 PIF policy stands for "Probably Impossible to Fix." It has been a heartfelt issue. We've  
14 heard from so many people on so many sides of these issues. And it has been a real  
15 challenge to try to find a fine line really to walk here in terms of preserving our critical Ag  
16 Reserve while at the same time respecting our faith communities and what they provide  
17 to us, both spiritually and in terms of services. I think it's important to know what we're  
18 not talking about here today. We're not talking about the past. The first item on this is  
19 the overall recommendation with respect to handling the PIF policy. The second item,  
20 Number Six, are the specifics. We are not talking about multiuse systems. We are not at  
21 this point talking about the fifth TDR program, an alternative to the existing systems.  
22 We're not talking about alternative septic systems and we're not talking about  
23 impervious surfaces. We're just talking about the question of whether or not it's  
24 appropriate at this point to continue the Council's policy of considering the extension of  
25 water and sewer in the RDT on a case by case basis. The recommendation of the T&E  
26 Committee is to end that practice and to say no more water and sewage extensions  
27 should be permitted in the Rural Density Zone except in a situation to preserve and  
28 support situations where there are failing septic systems. And the exact language of the  
29 Committee's recommendation is at Circle 38 and 39 of the packet, Item Number 5. So  
30 that is our fundamental -- the language is spelled out there that summarize this in great  
31 detail, but that is our primary recommendation. We thank -- all the work that has been  
32 done by the staff Committee that's been working with the community. Very thorough set  
33 of recommendations with respect to the PIF policies. And, as I said, we have not -- we  
34 are not at this point addressing all the issues on the table. This is solely directed  
35 towards the issue of water and sewer, and as we go into some of the specifics, the  
36 Council will see some of the tradeoffs that the Committee has recommended. So, if you  
37 like, we can move right on into Item Number Six, unless people have questions or  
38 comments.

39  
40 Council President Perez,  
41 I wanted to reiterate...

42  
43 Councilmember Floreen,  
44 Are you still on number four?



November 29, 2005

1  
2 Councilmember Silverman,  
3 Shock and awe over the absence of the Human Rights Office.

4  
5 Council President Perez,  
6 I feel badly right now because I know there are some people who came for this  
7 discussion who aren't here for this discussion because we told them not to come back.  
8 And so I think we should continue to have this debate because it's a very important --  
9 what we're about to do here, it's impossible to overstate, I think, the importance of the  
10 land use decisions that we're contemplating here in the Ag Reserve. 93,000 acres,  
11 whatever it is, roughly one-third of our County's land mass. And we are -- we  
12 unanimously in the Committee made a judgment that there should not be water and  
13 sewer hookup. And that reflects, I think, our judgment that it's not a question of where  
14 we want -- it's not a question of whether we want to help our Private Institutional  
15 Facilities grow, but what it reflects is a policy judgment about where our friends in  
16 Private Institutional Facilities, including but not limited to faith communities, should be  
17 allowed to grow. And I think the Committee majority -- the Committee unanimously said  
18 that the Ag Reserve is not the place where this should happen. And I strongly support  
19 that judgment and I think what we will do is put off the vote until this afternoon, but I  
20 think we should work through this in a worksession to see if there are any questions or  
21 concerns. Mr. Subin, just so you know, we are gonna break at 10:40 for people to  
22 attend that funeral service. And your light was on next.

23  
24 Councilmember Subin,  
25 Thank you, I was about to say I'm happy that the vote won't be until this afternoon to  
26 give us some time to discuss these because some of us do have to go. The Mayor of  
27 Gaithersburg's mother passed away Sunday night and some of us are going to be going  
28 to the funeral. Mr. President, I am in fundamental agreement with the recommendations  
29 that came out of the Committee. I think you're right. There's probably no greater land  
30 use decision that we have before us, or will have before us for probably for some time to  
31 come than how we deal with the agricultural preserve and what we need to do to protect  
32 it. The only -- the one set of questions that do I have though do revolve around Bethel  
33 that in terms of...

34  
35 Councilmember Floreen,  
36 We haven't gotten to the rest of the other recommendations.

37  
38 Councilmember Subin,  
39 Wasn't that one of the water and sewer?

40  
41 Councilmember Floreen,  
42 Well, we haven't...

43  
44 Councilmember Subin,



November 29, 2005

1 I don't mind holding up on my questions.

2  
3 Councilmember Floreen,  
4 That's the next item. This is the forward thinking recommendation in terms of what  
5 should happen in the future.

6  
7 Councilmember Subin,  
8 I have trouble with forward-thinking.

9  
10 Councilmember Floreen,  
11 We'll do the backward part next.

12  
13 Councilmember Subin,  
14 I'll have to back up then. Okay.

15  
16 Council President Perez,  
17 Okay...

18  
19 Councilmember Floreen,  
20 So that's the policy framework for the conversation. I don't know if people wanted to talk  
21 about that general objective. I think you have characterized the issues accurately in  
22 terms of the tension and the importance of the decision.

23  
24 Council President Perez,  
25 Mr. Silverman.

26  
27 Councilmember Silverman,  
28 Point of -- thank you, Mr. President. Point of clarification. I'm looking at packet five here,  
29 Agenda Item five. I understand the overarching policy and then I all see there's a  
30 recommendation on grandfathering. What are we talking about right now? And what are  
31 we commenting on now?

32  
33 Council President Perez,  
34 We are simply commenting now on overall policy. We will absolutely take up the  
35 grandfathering and, for instance, I observed I think the...

36  
37 Councilmember Floreen,  
38 Number Six is the -- are the specifics. We have a variety of pending applications.

39  
40 Councilmember Silverman,  
41 Okay, so the fact that the packet on page eight talks about the T&E recommendations  
42 regarding grandfathering I should just ignore until we can get to Number Six?

43  
44 Councilmember Floreen,

November 29, 2005



1 I think that's a better approach.

2  
3 Keith Levchenko,

4 The way to look at that is -- the way staff drafted the grandfathering itself, we put a date  
5 of November 29th in the actual water and sewer Plan Text Amendment.

6  
7 Councilmember Silverman,  
8 Okay, I just want to -- all right...

9  
10 Keith Levchenko,  
11 That means anything filed before that would be dealt with on a case by case basis.

12  
13 Councilmember Silverman,  
14 Okay, but -- Okay. And, Mr. President, how are you intending to handle votes? In other  
15 words, that's when we get to the actual resolution?

16  
17 Council President Perez,  
18 Yeah.

19  
20 Councilmember Silverman,  
21 We're just talking right now?

22  
23 Council President Perez,  
24 Amongst ourselves.

25  
26 Councilmember Silverman,  
27 Amongst ourselves because we're still waiting for someone from the Office of Human...

28  
29 Council President Perez,  
30 Yes, we've now gotten to Section 209, the subpoena power of the County Council.

31  
32 Councilmember Silverman,  
33 So it would be appropriate to comment on the policy. It would be appropriate to  
34 comment on the policy.

35  
36 Council President Perez,  
37 It's appropriate to comment on the policy. What I would like to do after we get through  
38 the policy. I know, for instance, that the -- I think the Beth-el folks are here. I'm hopeful  
39 we can get to some of these water and sewer category changes before we adjourn, and  
40 deal with that so we're effectively dealing with both the policy and then the  
41 grandfathering.

42  
43 Councilmember Silverman,





November 29, 2005

1 Thank you, Mr. President. I'll be brief. I may comment later on on specific category  
2 change requests. But, I strongly support the position of the Transportation and  
3 Environment Committee. It is a big County. We have many square miles. We have an  
4 Ag Reserve that I believe we should be protecting for agricultural uses. We have taken  
5 steps on this Council to support the use of the Ag Reserve for agricultural purposes  
6 when we amended the Zoning Ordinance to promote riding stables in the Ag Reserve  
7 because the equine industry is such a huge element of the Ag Reserve. But I will all say  
8 that my support for this policy is absolutely tied in to what I will categorize as a very  
9 liberal policy that I personally will have about the rest of the County. We cannot, on the  
10 one hand, say that 93,000 acres of Montgomery County is off limits to Private  
11 Institutional Facilities and, oh, by the way, we're going to impose a series of restrictions  
12 on the rest of the County that is going to make it virtually impossible for Private  
13 Institutional Facilities to go elsewhere. I live in the White Oak area of Silver Spring,  
14 which many of you may be familiar with. Right off New Hampshire Avenue, which those  
15 of us who live there affectionately refer to as the highway to heaven. I think it is a  
16 wonderful reflection of the diversity of Montgomery County. And while I know there have  
17 been contentious issues in the past relating to some of the uses by Private Institutional  
18 Facilities of land up and down New Hampshire Avenue, I think it's a tremendous asset  
19 to our community. So I want to make clear that my position and support of this policy is  
20 absolutely tied in to the rest of the PIF policy that we will be discussing maybe today,  
21 maybe not today, but at some point that has to do with recommendations from the  
22 Planning Board about impervious caps, about issues involving other recommendations  
23 that have come forth from the Planning Board. But I certainly don't want my position --  
24 and I'm just speaking for myself -- to be interpreted as a reflection on my interest in  
25 making sure that we have places for schools and for houses of worship in this County.  
26 They are integral to this community and I'm going to fight very hard during the rest of  
27 this process to ensure that there are opportunities for Private Institutional Facilities in  
28 the other hundreds of thousands of acres of Montgomery County. I just happen to  
29 believe that we should draw a line on the Ag Reserve and support a policy that supports  
30 agricultural use in the Ag Reserve and not encourage large institutions to be located in  
31 the Agricultural Reserve. Thank you.

32  
33 Council President Perez,  
34 Mr. Subin?

35  
36 Councilmember Subin,  
37 Thank you, Mr. President. I have for 20 years, 19 years up here, and more as a citizen  
38 been an extremely strong advocate of the Agricultural Reserve, and maintaining it as it  
39 is for agricultural, agricultural-related projects and for services that serve those  
40 communities and those communities specifically. We have also, and as Mr. Silverman  
41 indicated, in the past done what we could for facilities, organizations, including religious  
42 organizations among all the others that serve this County. I think it was six or eight  
43 years ago we had a huge set of issues. And sided with the religious community. What  
44 we have here is clearly a clash of priorities and two top priorities. The problem that we



November 29, 2005

1 have is you can't move the Agricultural Preserve. It is what it is. It is where it is and it is  
2 not going to change. And we have a nationally recognized program. And once you set  
3 those dominos falling, and we've seen it in other places, where you allow things to  
4 happen that heretofore had not -- it is extremely hard to stop the next and the next, and  
5 the next, and the next. And those dominos do not stop falling. That said, as Mr.  
6 Silverman indicated, there are areas of this County where facilities can be placed. The  
7 facilities can move. We have done what we needed to before to make sure that they  
8 could and I think we can do that again, and in the future. The recommendations that Mr.  
9 Knapp has certainly lays out the options, opens up the discussion, and will allow us to  
10 get to that place. But this is one of those classic clashes of top priorities. And one of  
11 them can't move. It just can't. And once we break the envelope, that envelope is broken  
12 forever. And we'll never get it back. It's been there for centuries. I think it would not be  
13 responsible for us to break that seal and set in motion its demise.

14  
15 Council President Perez,  
16 Mr. Knapp.

17  
18 Councilmember Knapp,  
19 Thank you, Mr. President. I appreciate the comments of my colleagues and the efforts  
20 of the T&E Committee. We've had a lot of discussion and I personally met with a lot of  
21 different groups on this topic over the course of the last couple months on all sides of  
22 the issue. And I guess I have been struck that the current Council policy is one in which  
23 we addressed these issues on an ad hoc basis, which, to some extent in my mind is a  
24 little bit of a punt. and so I think what we've got in front of us now is the ability to take a  
25 couple of issues that we can actually field the ball and advance the ball back down the  
26 field and really address what I think are two critical elements of our County and our  
27 County's future. One, our Ag Reserve, and our commitment to the Ag Reserve, and the  
28 enhancement of that for generations to come. The second which is the growth of our  
29 amazingly diverse and rich culture that the Private Institution Facilities, in particular the  
30 houses of worship and our religious community provide to Montgomery County. And by  
31 dint of fate or the way this current policy has been established they've been on kind of a  
32 crash course that we're going to get to a point where we're going to have to effectively  
33 choose between one or the other. I don't believe that was necessarily the intent of the  
34 policy. I believe that's effectively where we are right now. And, as I have outlined in a  
35 series of memos, and discussions of the full Council, in conversation with my colleagues  
36 and many of the organizations in the audience today, I believe that we can do both  
37 things. We can effectively reaffirm our agricultural -- our commitment to agricultural and  
38 the Ag Reserve while at the same time establish an affirmative policy for how we work  
39 with Private Institution Facilities, in particular religious institutions so we can make sure  
40 that they can grow and meet the challenges that they have in the future as well. And I  
41 think that's really what we need to do. Because of the way our current policy is  
42 structured we've set up what -- especially that public hearing looks like in either/or  
43 situation when the reality is that's not the case. And what we need to do is to, in the  
44 course of a very short time frame, I don't know fit's over the course of the next month or

November 29, 2005



1 course of 90 days. I have had conversations with the presumed incoming Council  
2 President, Mr. Leventhal to see how we schedule things. But to make sure that we have  
3 a very tight time frame in which we can look at all of the policies associated with both  
4 strengthening the Ag Reserve and how do we focus on making sure our PIFs and  
5 religious institutions in particular can grow and overcome the challenges that they have  
6 that have drawn them to the Ag Reserve in the first place. So I'm supportive of what the  
7 T&E Committee has put forward in this initial set of recommendations, but I all urge us  
8 as a Council and as Mr. Subin has just indicated to quickly come up with a series of  
9 policies that we can work with our religious institutions and make sure we get them to  
10 the table in a way that I don't know if they were brought to the tab before to come up  
11 with a series of policies that help them meet the challenges they have to further growing  
12 congregations.

13  
14 Council President Perez,  
15 Ms. Praisner.

16  
17 Councilmember Praisner,

18 I share the comments that have been made by my colleagues. I do have a couple of  
19 additional comments, though. As we have discussed -- which we will get back to again  
20 this afternoon -- the Zoning Text Amendment that is before us, it seeks to do a variety of  
21 things depending upon where you are in the County, in essence, what the zones are. In  
22 the Ag Reserve, it is focused on preserving the Ag Reserve. In the large lot zones, it is  
23 focused on looking at the environmental and community character issues that are  
24 associated with those areas of the County which, according to our master plans, are not  
25 designed for water and sewer. Trying to do both at the same time may be part of the  
26 challenge. But while we talk about preserving the Ag Reserve by restricting the  
27 extension of water and sewer -- and as I read the recommendation, it doesn't eliminate  
28 the presence of PIF in the Ag Reserve -- it eliminates the extension of water and sewer  
29 in the Ag Reserve for that purpose exclusively. There is the ability through public safety  
30 issues and others to look at the capacity or the ability or the desire for a public institution  
31 to be physically located or to expand its present existence within the Ag Reserve. And  
32 we had conversations last week about those who we had not had dialogue with as yet  
33 to that great an extent. Namely the smaller religious institutions that have existed within  
34 the Ag Reserve served the communities of the Ag Reserve for years. And our concerns  
35 about their ability, should there be challenges within their area, to be able to continue.  
36 And I think we have to be careful about saying we've closed the door to religious  
37 institutions in the Ag Reserve. Because that I do not believe is the intent -- or at least I  
38 do not support that intent. But nothing that we do here will preserve agricultural unless  
39 we focus on other issues associated with the Ag Reserve. Associated with making  
40 agricultural a viable option -- continued viable option associated with where any  
41 development occurs within the Ag Reserve as it relates to the expanse of farmland  
42 availability. Those issues as Mr. Knapp and I have discussed in the past, and folks like  
43 Mr. Lechleiter and others are more complex and deal with the economics of agriculture  
44 and the evolving nature of agriculture in this County, as is true elsewhere in the State of



November 29, 2005

1 Maryland. Whether you're talking about tobacco farmers of southern Maryland whose  
2 agricultural has changed, or the way in which we have embraced horticulture in this  
3 County as well as our conversations about equestrian ag businesses, so to speak.  
4 When it comes to the other areas of the County that are large lot areas, I think we need  
5 to give comparable respect to the issues of the environment and the water quality  
6 issues. How we address them may continue to be on a case by case basis and through  
7 the master plans just as our master plans I believe as Mr. Knapp has suggested, need  
8 to take a more conscious focus on what may be ways in which we can sustain the  
9 presence of religious institutions feel the pressure to relocate because of the problems  
10 of expansion within the more expensive areas land-wise in the County. So I would really  
11 like this Council to work through all of those issues between now and the end of the  
12 Council's term, to leave these things hanging is I think unfair to everyone within the  
13 community and so I hope that we can work through this. At this point, I guess with my  
14 own interpretation of what we're saying about the Ag Reserve, I have a reasonable  
15 comfort level. But I do not believe that we have addressed the mayor issue, which is the  
16 priority associated here, which strengthening the agricultural focus -- continued viability  
17 of the ag land and ag business in our County.

18  
19 Council President Perez,  
20 Mr. Denis.

21  
22 Councilmember Denis,  
23 Thank you, Mr. President. it's great to see the bankers following our discussion so  
24 carefully, and... And, as former senator, I think I understand we're marking time or  
25 whatever. I just have a few general comments and but first and foremost I do want to  
26 commend my seat mate, the Chair of the Committee, Ms. Floreen, for doing a great job  
27 pulling all of this together in a form in which we can consider it and vote it up or down in  
28 the aggregate or piece by piece. I may or may not have disagreements on some of the  
29 issues as we go through it depending on the discussion and answers to some  
30 questions. But I do commend the Chair and the Committee for the report and for the  
31 explanation. I, too, listed "Casablanca" as my favorite movie in the "Post"  
32 questionnaire...

33  
34 Councilmember Floreen,  
35 Did you mean it?

36  
37 Councilmember Denis,  
38 ...and I meant it. And there is a reference that is pertinent to exactly to this discussion.  
39 Rick, the Humphrey Bogart character, at one point is asked why he moved to  
40 Casablanca. And Humphrey Bogart says "I moved there for the water." And he's told,  
41 but Casablanca's in the middle of a desert, and Bogart says, "I was misinformed." And  
42 that, to me, that's one of the underlying issues here. Were some people misinformed  
43 when they got into this process. Were they informed that this would be just a slam dunk  
44 and you just go through paint by the colors or whatever? And you just go -- and it's

November 29, 2005



gonna be automatic. Now we have this great controversy. And I hope that there's some explanation of that as we go through this discussion. Agriculture, to me, has always been a very mysterious and awesome thing. I remember as a kid in school when my teacher said that an apple starts out as a flower, an apple blossom. I thought it was a made-up thing, like Santa Claus. And how could this be? But the fact that you take a seed and you bury it into the ground and then using implements that you can trace to Neolithic and Paleolithic times, and that from this process food comes out of the ground that feeds us all is just awesome. And I feel and I am concerned not only for the aesthetic value of the Agricultural Reserve, but because of the war in which we are now engaged, the war on terror. It may well be necessary that we use the Agricultural Reserve even more intensely than it's being used now for its original and still purpose, and that is to feed us all. So that is one of the issues and concerns that I have as we go through this. Water and sewer. I'm sure everyone will recall the Cloaca Maxima, the great sewer that was built by the Etruscans to bring water into Rome, the first aqueduct. When the Romans kicked out the Etruscans, they improved on it, they built ten more. They perfected a gravity system that was incredible. It couldn't be too steep. Had to be just so. And so throughout Italy and the Roman world, people had more fresh water then per capita than they do today. And all of those images you see of people filling up their buckets in the town center, that's for real. The water was plentiful, it was clean. And it was free for most people. And there was enough of it so that the sewer would take it out to the Tiber or the Mediterranean, to wherever the Adriatic, wherever it went. But as time went on, believe it or not, in the Roman Senate and other bodies throughout the Roman world, they had discussions very similar to the discussion we're having today. They may not have called it "Water and Sewer Category Changes," but it was the same basic discussion. The extent was, who could tap into the sewer, to the pipe, as we would call it today? Is the price high enough? Is it easy enough for the patricians who wanted to do it for whatever purpose. Whether it's for farming or for a bath house or whatever it may be. So one of the questions I would like to have answered as we go through the process, either staff or someone else who's more familiar with it, and as they say I'm not a member of the Committee, and this is not in the district I'm honored to represent, but I would like to know how difficult or how easy it is to tap into these pipes once you put them in. What have we heard from either the Washington Suburban Sanitary Commission, or our own Department of the Environment, or anyone who deals with this? Are we basic -- are we opening up the Agricultural Reserve, making it easier for other types of development or are we not? Or are we not? Are there sufficient protections in place to guarantee us that the sewer pipe will not be used for any purpose other than the purpose that is intended? So that's a question that I have that I hope others will address maybe now perhaps staff would like to do it or anyone else, as we go through this. I think, to me, that's an underlying issue. Thank you, Mr. President.

Council President Perez,  
Mr. Andrews.

Councilmember Andrews,



November 29, 2005

1 Thank you, Mr. President. This is defining moment in the history of the County's  
2 Agricultural Reserve. And if the Agricultural Reserve is lost at some point, it won't be  
3 lost in one fell swoop. It will be lost incrementally. And by not allowing the extension of  
4 water and sewer, we greatly reduce the chance that it won't be lost at all. And so what  
5 the Council will be doing by adopting this policy is to ensure at least that the Agricultural  
6 Reserve will not be lost on this Council's watch. And that it won't begin to be lost on this  
7 Council's watch. There will continue to be challenges and threats the Agricultural  
8 Reserve will face in terms of its sustainability, but this will greatly increase its chances.  
9 So it is a defining moment and that is why the Council should adopt this policy.

10  
11 Council President Perez,  
12 Great. Okay.

13  
14 Councilmember Denis,  
15 Mr. President, I think that Mr. Levchenko might have been on the verge of maybe  
16 responding to my question.

17  
18 Council President Perez,  
19 I'm sorry.

20  
21 Councilmember Denis,  
22 If that's okay.

23  
24 Council President Perez,  
25 Sure. I apologize. My fault.

26  
27 Keith Levchenko,  
28 On the question of can other people tie into these systems, the PIF policy does have a  
29 requirement that extensions not open up service to properties that would otherwise be  
30 ineligible. So the alignments that are chosen in cooperation with WSSC and the  
31 applicant have to meet that criteria. So that's one protection. Now from an engineering  
32 standpoint, if an alignment is out there, whether you can hookup or not is a yes/no  
33 question. If it's a pressure main, it's going to be more difficult to hookup. If it's gravity it  
34 will be easier to hookup. But, from -- the key issue is how you set the alignment in the  
35 first place. If it's according to the PIF policy, you're protecting that issue up front. You're  
36 not allowing hookups by having an alignment run a certain path. After the alignment is in  
37 -- and certainly we've seen in different parts of the country when we put in lines for  
38 schools or other places, once the line is in, there will be pressure as we've seen to  
39 hookup to these systems.

40  
41 Council President Perez,  
42 Is that responsive?

43  
44 Councilmember Denis,



November 29, 2005

1 Yes, thank you.

2  
3 Council President Perez,  
4 Yes. Great. Okay. So what I intend to do...

5  
6 Councilmember Floreen,  
7 We have the outlines of the policy. May I suggest that we return to the specifics at  
8 12:15.

9  
10 Council President Perez,  
11 At 12:15. That's the outline of the policy. We'll get to the specifics at 12:15. Again, we  
12 have to -- a number of us have already left to go to the funeral service. And we will  
13 reconvene and we will take this up at 12:15 and then we will go right into the water and  
14 sewer category changes. We'll just go right through. I expect we can finish all those  
15 category changes by 2:00. And then we'll have a wonderful meeting with the mythical  
16 Executive Branch on this predatory discrimination bill. Thank you.

17  
18 [no audio]  
19 [Council in recess].

20  
21  
22  
23 Council President Perez,  
24 Okay, I think we have a quorum, so let's continue. Again, I apologize for the delay for  
25 the attendance at the service and let me turn it back over. We had completed, I think,  
26 our discussion on the issue of the policy regarding water/sewer hookup -- or no water  
27 and sewer.

28  
29 Councilmember Floreen,  
30 That's correct, Mr. President. We -- as I said earlier, the Committee recommends that  
31 the Council's current policy of evaluating the extension of water and sewer in the RDT  
32 zone to private institutions should be eliminated except in the case of failing septic  
33 systems. Turning to packet item number six, Agenda Item Number Six, we can go  
34 through the specifics of the Committee recommendations, not all of these are...

35  
36 Council President Perez,  
37 Before you get to that...

38  
39 Councilmember Floreen,  
40 We have some deferred ones and more recent ones. They are not all -- well, they all are  
41 Private Institutional Facilities.

42  
43 Council President Perez,



November 29, 2005

1 I guess I have a procedural question for -- Mr. Chairman, good to see you. Long time no  
2 see. It's been about 12 hours since I saw you in Kensington. Do we need to vote up or  
3 down right now on the first issue of the no water and sewer in the RDT? A vote is  
4 needed.

5  
6 Councilmember Floreen,  
7 We're going to need to vote on all of these one way or the other.

8  
9 Council President Perez,  
10 But I'm wondering if we should at least we can start with that, and then we can get to  
11 the issues of -- we'll be getting piecemeal to the issues of each individual application.  
12 And it seems to me that there is some consensus on that.

13  
14 Councilmember Floreen,  
15 I believe there was unanimity on that principle although we don't have all the players  
16 right now. If you would like to do that, Mr. President, I'll move the T&E Committee  
17 recommendation on Item Number Five.

18  
19 Council President Perez,  
20 And that recommendation, again we are not dealing with the grandfathering right now,  
21 we're dealing with simply no water and sewer hookup in the RDT. That's what we're  
22 approving without objection right now. And so we will then address the other issues that  
23 will involve the grandfathering.

24  
25 Councilmember Floreen,  
26 Let me just ask Keith a question. The -- you added an amendment to note that action  
27 would approve, apply to cases filed after November 29th, which is today.

28  
29 Keith Levchenko,  
30 Right.

31  
32 Councilmember Floreen,  
33 Have there been any filed since last summer? Since we have the ones that are before  
34 us.

35  
36 Alan Soukup,  
37 In the RDT, Alan Soukup, with DEP...

38  
39 Council President Perez,  
40 Department of Environmental Protection?

41  
42 Alan Soukup,  
43 Yes.





November 29, 2005

1 Council President Perez,  
2 That's an Executive Branch agency.

3  
4 Alan Soukup,  
5 Yes, it is.

6  
7 Council President Perez,  
8 It's good to see you.

9  
10 Councilmember Floreen,  
11 They are able to -- they follow our agenda.

12  
13 Alan Soukup,  
14 Yep.

15  
16 Councilmember Floreen,  
17 Mr. President, it's nice and welcoming approach.

18  
19 Alan Soukup,  
20 Actually Keith calls me because he's never sure. Yeah, there have been no cases in the  
21 RDT zone filed that I'm aware of.

22  
23 Councilmember Floreen,  
24 There have been none. If that's the case then there is no need for a grandfathering  
25 provision although we do have one matter in particular. We'll take you through the ones  
26 that are pending.

27  
28 Keith Levchenko,  
29 What the language would allow you to do is consider the ones in the next packet on  
30 case-by-case basis and after today it would be a blanket prohibition.

31  
32 Councilmember Floreen,  
33 That is certainly the intention. So turning to the -- Agenda Item Number Six, you'll see  
34 on page two a summary of the T&E Committee recommendations. These are the  
35 current most recent filed applications for Private Institutional Facilities. The first one, the  
36 Christian Life Center, frankly, is not before us as the applicant has withdrawn the  
37 request. And I'm just going to...

38  
39 Council President Perez,  
40 Go ahead.

41  
42 Councilmember Floreen,  
43 ...to go through this and if people have questions...

November 29, 2005



1 Councilmember Praisner,  
2 What about this letter?

3  
4 Councilmember Floreen,  
5 That is a different one.

6  
7 Keith Levchenko,  
8 That has to do with the deferred request.

9  
10 Councilmember Floreen,  
11 Yes, this actually has to do...

12  
13 Councilmember Praisner,  
14 Okay, I saw "Christian Life Center" and...

15  
16 Councilmember Floreen,  
17 ...actually that has to do with the next series on page seven. The second one is the  
18 People's Community Baptist Church. The T&E Committee -- and we heard testimony on  
19 this from both sides of the coin. They propose a fairly aggressive project there.  
20 However, since they filed their application, we were informed -- and you have a letter in  
21 the file to this effect -- it's on Circle 66 and 67 which indicates that they have acquired  
22 some additional property, 29 acres, and they are -- believe that they will be able to  
23 maintain an impervious cap of percentage usage of about 25%, which is comparable  
24 what was requested and received from the Lutheran Church, St. Andrew next door to  
25 this. And, as a result of that, the Committee recommendation is to approve that one.

26  
27 Council President Perez,  
28 Ms. Praisner.

29  
30 Councilmember Praisner,  
31 There were a couple of questions that came in from the community, and I also noted in  
32 the packet that Ms. Floreen's position was deferral.

33  
34 Councilmember Floreen,  
35 And that was the need for this letter.

36  
37 Councilmember Praisner,  
38 Or the subdivision issues of the Planning Board because of the parcel? I wasn't sure...

39  
40 Councilmember Floreen,  
41 There are different views of how this additional piece of property might be treated. And I  
42 think our view -- because otherwise they would have to apply to sewer connection to  
43 this parcel to support that if I'm correct. Is that right, Keith?



November 29, 2005

1 Keith Levchenko,  
2 Right, that parcel's not the subject of this...

3  
4 Councilmember Floreen,  
5 Not included. That's intended to be kept as a buffer based on the church's letter to us.  
6 We -- at that point we had not gotten a letter from the church. They have though since  
7 sent that in, and agreed to continue to work with the community on the details of the  
8 project.

9  
10 Councilmember Praisner,  
11 Well, I have a couple of comments.

12  
13 Councilmember Floreen,  
14 Sure.

15  
16 Councilmember Praisner,  
17 I wasn't sure what the deferral meant. But that's clarification because I don't think a  
18 deferral would allow us the issue to be resolved and allow the community and the  
19 church to work together on this issue. And it will -- would not contribute to the kind of  
20 working together that needs to happen. So the issue is I think that the master plan  
21 questions, and the issues associated with what the State may or may not say, relative to  
22 the development -- or the proposal for the development. As I've had conversations both  
23 with people's representatives and with community folks, I think what the community  
24 objects to most, or what I heard, is the size and scale of the development proposed, not  
25 the presence of the church. Obviously there are significant religious institutions in the  
26 area as Mr. Silverman indicated. I think there is some concern about the environment  
27 and the stream nearby and also just the magnitude of the complex that is proposed.  
28 There's a lot of traffic that occurs on Norwood Road as a function of activities there, but  
29 there's also a lot of traffic that occurs because people go south to New Hampshire  
30 Avenue off of the 198 Norbeck Road connector and also come down Norwood Road  
31 from Sandy Spring and Olney. So it is a busy road and not necessarily associated with  
32 the uses on the road although I think the fact that there's a traffic -- an additional traffic  
33 light not as a major intersection is a function of the large high school that the County  
34 has contributed to the issues in that area. I think that discussion with St. Andrew's did  
35 set a standard though by having St. Andrew's both agree to an impervious cap of 25%  
36 and also agree to work with the community on height and building mass. And there  
37 were discussions about how that development went on. I'm not sure what the State is  
38 going to say about the master plan and what that implication might be. Clearly People's  
39 already exists there, so I think the issue may not be the water and sewer extension, but  
40 the issue may be the development plan which the State may see as inconsistent with  
41 the master plan. I'd like to try and avoid the State interjecting itself in a negative way in  
42 this process because I don't see the Council reopening the master plan in the process  
43 as well. So one of the things that I've encouraged is that as there is further review on  
44 this issue, and the development that folks from People's look at what they have planned

November 29, 2005



1 for activity at that site, the good work that they do at this point is not confined to a  
2 specific building or a location. They do significant and positive work at the East County  
3 Government Center and that certainly is better located in my view for service to a  
4 broader community because of the population that is proposed for the Cloverly area will  
5 never match the population or the access that one gets from the Government Center  
6 where there is a bus depot and a lot of population that can walk to the Center. So I  
7 would encourage the church representatives, many of whom are here today, to work  
8 with the community representatives, many of whom are here today, to try to work  
9 through the issues of the site design and the standards that are consistent with a rural  
10 setting. You can have a church in a rural setting. You can have the -- some of the  
11 functions that you're proposing, and there are very bright people on both sides of this  
12 issue. It seems to me that what -- this will all be resolved or could be resolved in a  
13 positive way if folks come together and work through these issues. It also may be  
14 negatively resolved if the State weighs in. If it is inconsistent with the master plan and to  
15 some extent I have to say that what is proposed right now appears to me to be  
16 inconsistent with the master plan in size and scale. So I would support the approval of  
17 the water and sewer hookup with a limitation of 25%, and -- just like St. Andrew's has --  
18 but also with an understanding, as the Chair said, that the development and the plan for  
19 the site will be in keeping with the character of the neighborhood as we've worked  
20 through with the master plan. I think it can be done. I'd be more than happy to facilitate  
21 that discussion further. It has to be a serious one though, and I think that the approval  
22 should be contingent on that 25% imperviousness and on trying to work with the  
23 community on a design that is more compatible with the community. I see some folks  
24 who will play a major role for the church nodding at me, so I will assume that that is a  
25 commitment to do just that. I also think though that we have a major issue that comes  
26 forward from the ZTA that Mr. Zyontz and others have brought to us. And while I agree  
27 with some of the comments my colleague, Mr. Silverman, made this morning about the  
28 Ag Reserve, I am equally concerned about our large lot zones and I'm equally  
29 concerned about the environmental and community impacts there. And I think there are  
30 ways for coexistence and I love New Hampshire Avenue and the diversity of the  
31 religious institutions, but I also love the Holly Grove community. And the feeling or  
32 concern that they have that -- and the Cloverly community, that they are overwhelmed  
33 by the changes that are occurring, we need to preserve that community as well. So I  
34 would hope that that language could be a part of what we're talking about.

35  
36 Council President Perez,  
37 Mr. Silverman?

38  
39 Councilmember Silverman,  
40 I have two questions, the first one is to the Executive Branch. In the packet that we  
41 have, unless I missed seeing it somewhere else, the position of the Executive Branch  
42 on page two on several of these was defer pending Council action on PIF working group  
43 recommendations. We're not here to discuss the PIF working group recommendations.  
44 We will at some point, but not right now. So does the Executive Branch have a position

November 29, 2005



1 on -- and this will apply to all of them -- does the Executive Branch have a new updated  
2 position on any of these requests?

3  
4 Alan Soukup,  
5 Given the Council's direction on or apparent direction I should say on the  
6 recommendations for the PIF policy in terms of restricting access to the RDT zone, and  
7 that is the only change that the Council is looking at for the policy then given the policy  
8 that would now stand if approved and the Council's previous actions in this area of  
9 Cloverly, we would support the Committee recommendation to approve, with  
10 restrictions, the request for People's.

11  
12 Councilmember Silverman,  
13 My second question I guess is directed to Mrs. Praisner. We have a Committee  
14 recommendation does not have a conditional approval on it and I was trying to  
15 understand if it is a suggestion of the Council that there be an impervious cap, or were  
16 you actually suggesting -- did you want to make that as an amendment?

17  
18 Councilmember Praisner,  
19 Yes, I did.

20  
21 Councilmember Silverman,  
22 Yes, you did, what?

23  
24 Councilmember Praisner,  
25 Want to make it -- I assumed since we asked for some information and had gotten back  
26 the information that it is possible to stay within the similar cap of St. Andrew's at 25%  
27 that that would be part of the -- and also the willingness to work with the community on  
28 the size and scope issues -- so I was making that -- just is as we did with St. Andrew's --  
29 a requirement of the approval.

30  
31 Council President Perez,  
32 That is a motion.

33  
34 Councilmember Floreen,  
35 That's a motion. Okay. It fails for lack of second. Well, let's talk about it then. I guess we  
36 have been talking about it.

37  
38 Keith Levchenko,  
39 I think it's important that the Committee had discussed those specific conditions at the  
40 work session but did not have the letter at the time of the work session, And that's why  
41 we don't see the conditions in front of us.

42  
43 Councilmember Praisner,

November 29, 2005



1 Right, and all I'm doing is taking what the Committee had asked for and making it part of  
2 the formal action that we're having in front of us. I don't see anything inconsistent with  
3 what the Committee asked for.

4  
5 Council President Perez,  
6 Okay. Mr. Silverman.

7  
8 Councilmember Silverman,  
9 Yeah, thank you, Mr. President. I don't think there's anything inconsistent with the fact  
10 that the Committee asked for the letter. The question is are we going to negotiate on a  
11 case-by-case basis water and sewer category changes outside the Ag Reserve based  
12 on impervious caps. I'm not prepared to support an impervious cap outside the Ag  
13 Reserve. That's going to be my position when we have discussion in Committee and the  
14 Council notwithstanding Park and Planning's position. It may prevail, it may not prevail,  
15 but I'm not interested in putting artificial restrictions on Private Institutional Facilities  
16 outside the Ag Reserve. And to condition this approval on a 25% imperviousness level,  
17 while I recognize the fact that in this case People's may be able to meet that and I think  
18 that's a worthy goal, I'm not interested in establishing a precedent that allows us to  
19 negotiate impervious caps with each and every applicant that comes in outside the Ag  
20 Reserve. Because I don't know how we would have anything remotely close to a  
21 consistent policy. What may be -- 25% may work in this case. The next institution that  
22 comes in may want 29% or 35% because that's what's necessary for them to be able to  
23 do what they want to do. And I'm not actually interested in getting into that approach,  
24 because I think that makes -- if we had an ad hoc policy before in the Ag Reserve on  
25 water and sewer category changes, which is what we had until, you know, a few  
26 moments ago, all we will basically be doing is creating an ad hoc policy outside the Ag  
27 Reserve that is going to be based on what somebody wants to do as an impervious cap,  
28 and I'm uncomfortable with that. So I'm not going to support the amendment. I would  
29 like to support the original Committee recommendations.

30  
31 Councilmember Floreen,  
32 Let me just say, at least, I was awaiting that letter from the church and I believe that  
33 they will abide by their commitment and that -- that works for me in terms of supporting  
34 the application.

35  
36 Council President Perez,  
37 Ms. Praisner.

38  
39 Councilmember Praisner,  
40 This is not anything different than what we did with St. Andrew's, so can we get a verbal  
41 comment from People's? Is the letter what they intend to do?

42  
43 Councilmember Floreen,  
44 You're going to need someone to share.



November 29, 2005

1  
2 Council President Perez,  
3 If you can -- identify yourself initially for the record, that would be great.

4  
5 Erika Lathom,  
6 Thank you for the opportunity. For the record, Erika Lathom with Holland and Knight  
7 representing People's.

8  
9 Jeff Lee,  
10 My name is Jeff Lee, I'm with the People's Community Baptist Church.

11  
12 Erika Lathom,  
13 I'm sorry, can you rephrase the question?

14  
15 Councilmember Praisner,  
16 My question was the letter stated that you would abide by the 25% impervious cap and  
17 that you would work with the community on the issues of scope and scale given their  
18 concerns about the community character. Is that your position at this point?

19  
20 Erika Lathom,  
21 Absolutely intend to abide by the letter. In fact, Jeff can speak in more detail, but have  
22 met with the community since...

23  
24 Councilmember Praisner,  
25 Yeah, but I think the community though continues to have some concerns. Otherwise I  
26 wouldn't have raised that today.

27  
28 Erika Lathom,  
29 We certainly intend to continue...

30  
31 Councilmember Praisner,  
32 Mr. Lee knows that and as I indicated I'm anxious to work with all of you on these  
33 issues. I've also made some comments about the uses and locations and things. I think  
34 the community is here as well, and if the majority of my colleagues are not comfortable  
35 with the kind of requirement which we put on St. Andrews, and I don't think is any  
36 different, then that will have to be the will of the Council, but I know People's to be a  
37 church of its word and so I was asking what your word is on that issue.

38  
39 Jeff Lee,  
40 Our word, as Erika said, is outlined in the letter, however, to what you said earlier we've  
41 been willing to work with the community from day one and just to that end I would not  
42 like to see us have a artificial cap on us when we fully intend to have those discussions  
43 that you talk about. But here to pass, the portion of the community has been zero, not a  
44 situation where they would work with us. They wanted nothing, so for us to come in then

November 29, 2005



1 from zero and then throw another cap on ourselves we sort of negotiated against  
2 ourselves here.

3  
4 Councilmember Praisner,  
5 Well, that wasn't my...

6  
7 Jeff Lee,  
8 I'm negotiating against myself.

9  
10 Councilmember Praisner,  
11 Fine, I understand that but that wasn't my understanding. The community is not...

12  
13 Jeff Lee,  
14 But I wish, if you could get one of them -- a member of the community to come over and  
15 agree to...

16  
17 Councilmember Praisner,  
18 Ms. Thomas, would you rise and indicate whether the community is willing to work with  
19 the church on these issues?

20  
21 Mable Thompson,  
22 The community has tried to reason with People's. On several occasions we have talked  
23 with representatives from the church and our experience has been that they have put  
24 forth a proposal and they are not willing to negotiate on downsizing any of the project in  
25 their proposal. We've asked that they review the situation with Victory Housing and  
26 Hampshire's Green application that was denied a few years ago. We've asked if they  
27 would go through the files and if they would talk to members of the Council who were in  
28 office at the time to understand our position of what our vision is for the community. And  
29 we have not been able to convince them that we have a vision that is entirely different  
30 from theirs, that ours is based on the master plan, which we helped to form, and that  
31 we...

32  
33 Council President Perez,  
34 We're having -- the problem is they cannot down -- the people that are watching at  
35 home can't hear you.

36  
37 Councilmember Praisner,  
38 Mable, I'm sorry, Mable, thank you. I think she's done, thank you. The question though,  
39 Mable, is are you willing to work with the church, yes or no?

40  
41 Council President Perez,  
42 We need to have somebody up here. The feedback that I'm getting.

43  
44 Jeff Lee,



November 29, 2005



1 If that response is they're willing to move above zero, then we're willing to discuss,  
2 'cause -- and I didn't hear that in her comment, that they have moved. She said their's is  
3 different from ours, but if we have a working relationship where it's above zero, we've  
4 got something to work with.

5  
6 Councilmember Praisner,  
7 Mable, the question is -- is the position that you're willing to work within the context of  
8 accepting that there will be more development of the church there within the context of  
9 working together on how that looks?

10  
11 Mable Thompson,  
12 We have been willing all along to do that. And we have invited them to Master Plan  
13 Citizens Advisory Committee. And we've invited them to Cloverly Civic Association and  
14 we've entertained discussions within our homes.

15  
16 Councilmember Praisner,  
17 I just -- the reason why I'm trying to get an agreement that folks will work together is I  
18 believe the State having looked at the master plan, will have grave concerns about the  
19 extension of the church at all without this dialog. That's the point I'm trying to make.

20  
21 Jeff Lee,  
22 My only point is that the State will come back...

23  
24 Councilmember Praisner,  
25 I understand your point.

26  
27 Jeff Lee,  
28 ...no, but even at the State level, the State will come back and say. As you have  
29 outlined it, we would disagree with this part, that part, or this part. We have not been  
30 able to get any of that kind of communication.

31  
32 Councilmember Praisner,  
33 I understand that and that's why I'm saying I would like to have resolution to move  
34 forward so we can get an answer from the State. But the State may say no completely.

35  
36 Jeff Lee,  
37 They may, but they will also -- they will tell you why. I mean our response has been just,  
38 no.

39  
40 Councilmember Praisner,  
41 I don't, they may just say "No, it's not consistent with the master plan." That's why I  
42 would urge you both and that's why I was trying to add this in this conversation,  
43 because I think the master plan causes problems. Not for a water and sewer hookup. I  
44 don't think that is the issue, the issue that the State will have a problem with, is the

November 29, 2005



1 development that is proposed to use that water and sewer hookup. That's where I think  
2 the conversation needs to occur. So with that kind of spirit is why I was trying to urge  
3 folks to make a commitment to come together.

4  
5 Erika Lathom,  
6 I think that we standby the commitment made in the letter.

7  
8 Councilmember Praisner,  
9 Thank you.

10  
11 Erika Lathom,  
12 I just want to point out -- or state explicitly that we would object to a formal amendment  
13 to that simply for the reason that we think the letter speaks for itself.

14  
15 Councilmember Praisner,  
16 I understand that my point is I think it's stronger in going to the State with that in the  
17 process. I think it's stronger for the Council to have made that kind of commitment and  
18 for the parties to have accepted that kind of commitment within the action that we're  
19 taking. I think it's a stronger argument for People's. I understand the concern, but I  
20 personally think it's a stronger argument that there is that kind of expectation from the  
21 master plan actors in this case. That's the reason why I'm proposing it. Not to tie your  
22 hands but to make a statement of the standards that would be a part of the process.

23  
24 Erika Lathom,  
25 I agree. I just add that it's probably maybe a little redundant since it's already part of the  
26 record.

27  
28 Councilmember Praisner,  
29 I don't think it's redundant. I made my motion. Thank you.

30  
31 Jeff Lee,  
32 Thank you.

33  
34 Council President Perez,  
35 Okay, okay.

36  
37 Mable Thompson,  
38 Thank you.

39  
40 Council President Perez,  
41 Mr. Silverman,!

42  
43 Councilmember Silverman,



November 29, 2005

1 I don't want to belabor the point, I just want to point out we're going to have another  
2 one. That we're going to have Number Four, Church of Redeemer, which does not have  
3 a cap. That's my concern is that we're going to end up picking lines in the sand here.  
4 Literally, case by case, and I don't know how we would make distinctions between the  
5 two.

6  
7 Council President Perez,

8 Okay, motion has been made and seconded. All those in favor? Ms. Praisner, Mr.  
9 Andrews, Mr. Denis. Opposed? Ms. Floreen, Mr. Silverman, Mr. Knapp, Mr. Leventhal,  
10 myself. Motion fails 3-5. Derwood Bible Church.

11  
12 Councilmember Floreen,

13 Okay, next one. Derwood Bible Church, this, as you may know, has been controversial.  
14 Has generated a lot of communications with us. This is a large RDT property near  
15 Laytonsville. It is and the Committee recommendation on this one is that it is not ready  
16 for prime time. We recommend deferral. We are told that the application is in the  
17 process of being revised itself. We also have Councilmember Knapp's proposal to set a  
18 limit on the multiuse systems which we think would be extremely relevant to  
19 consideration of this application. This is not an RDT application that requires water and  
20 sewer. The only issue here is multiuse system. It is on prime agricultural land which is a  
21 significant concern to the community and to -- the agricultural community and certainly  
22 to the community that surrounds this. However, it is currently a permitted use. We are  
23 told that it could the imperviousness associated with this project would be around 15%  
24 as I recall from the conversations we had with the applicant earlier and they do propose  
25 to subject about 100 acres or more as a key to an agricultural kind of easement. That is  
26 not before us at this point though, what the Committee recommendation is at this point  
27 in time is to wait, particularly to see how this application can be revised. We know that  
28 the applicant has been working with the community. We also are very interested in the  
29 multiuse system amendment that Mr. Knapp has proposed.

30  
31 Council President Perez,  
32 There are no lights.

33  
34 Councilmember Floreen,  
35 Okay, moving right along.

36  
37 Council President Perez,  
38 Church of the Redeemer.

39  
40 Councilmember Floreen,  
41 Church of the Redeemer. It is on Woodfield Road. The Committee recommends  
42 approval of this one. It's RE-1 zoned property and I would in particular draw your  
43 attention to the map on Circle 41 and 42. As we looked at this application we saw that it  
44 is surrounded by a residential development or otherwise across the street from a



November 29, 2005

1 temple. We are told it is not in the sensitive watershed that we were concerned about in  
2 the Upper Rock Creek Plan and so we did not recommend a limit on this one.

3  
4 Council President Perez,  
5 No lights. Oh, I'm sorry, Ms. Praisner.

6  
7 Councilmember Praisner,  
8 My position is the same as Council staff and the Planning Board that this should be  
9 denied. It's inconsistent with the master.

10  
11 Councilmember Floreen,  
12 Okay?

13  
14 Council President Perez,  
15 Number Five.

16  
17 Councilmember Floreen,  
18 The next one, I believe is the one associated with the letter that we have received. TWS  
19 Land Barons -- and I think this is an unwise name for the... [laughter] ...for the Butler  
20 family of Butler's orchard. They're really just local farmers but, the Committee  
21 recommendation on this one, this is the RDT zone. The Committee recommendation  
22 was to deny water and sewer for this one. We were told that they were in negotiation  
23 with the church, I guess it was the Christian Life Center at this -- the point that the  
24 Committee had it there was no official applicant per se, and I gather this was still the  
25 case, is that right?

26  
27 Keith Levchenko,  
28 The application has not been formally changed. It was first received about four years  
29 ago with the owner being the applicant.

30  
31 Councilmember Floreen,  
32 So that having not been resolved at this point in time, the recommendation of the  
33 Committee was to deny it. Next one?

34  
35 Council President Perez,  
36 No, Mr. Leventhal has his light...

37  
38 Councilmember Leventhal,  
39 I'm going to stick with the general policy that we're not going to grant water and sewer  
40 hookups in the RDT zone, having said that I'm a little confused about the status of this  
41 one because I spoke with Pastor Libby, at least we exchanged voice mail messages,  
42 and in the packet that I saw last night, it said it was withdrawn by applicant, and yet...

43  
44 Councilmember Floreen,



November 29, 2005

1 No, that's the other one, that's number 18.

2  
3 Keith Levchenko,  
4 Not this one.

5  
6 Councilmember Praisner,  
7 No.

8  
9 Councilmember Leventhal,  
10 Oh, so they have two requests? Christian Life Center?

11  
12 Keith Levchenko,  
13 Yes, the Christian Life Center -- there was a request in the current package that was  
14 withdrawn. That's a separate property. It's not clear to me whether...

15  
16 Councilmember Leventhal,  
17 Okay, so it's the Butler property that's before us. And the applicant was the Butler  
18 family.

19  
20 Keith Levchenko,  
21 Originally, right, four years ago.

22  
23 Councilmember Leventhal,  
24 But in any event the committee voted to deny.

25  
26 Keith Levchenko,  
27 Right, it was originally recommended for deferral because there was no applicant -- the  
28 applicant was not the PIF that would be using the property. It never came back to the  
29 Council in any form with a PIF identified and up until a couple weeks ago we had no  
30 knowledge that any PIF was even negotiating with that property. We did received  
31 correspondence from the Butler family and a you also got a letter from a potential PIF  
32 applicant for this property. That's first staff has heard of this in four years.

33  
34 Councilmember Leventhal,  
35 Mr. President, I don't want to draw this out unduly, it's just that when this came before  
36 the Committee the Church was not represented. I don't know if they're represented here  
37 in the audience today. We've made the judgment now, we voted or we're -- have we  
38 voted yet on the policy on water and sewer hookups? I think we haven't, but the  
39 direction -- we did. The direction -- was I there? Did we vote on it? It's been a long day!!

40  
41 Council President Perez,  
42 You led the effort, Mr. Leventhal!!

43  
44 Multiple Speakers,

November 29, 2005



1 [laughter]  
2  
3 Councilmember Leventhal,  
4 Right, and I did a heck of a job!!  
5  
6 Multiple Speakers,  
7 [laughter]  
8  
9 Councilmember Leventhal,  
10 And I was awesome!!  
11  
12 Councilmember Floreen,  
13 You were inspiring.  
14  
15 Council President Perez,  
16 You did it in three languages, don't you remember?  
17  
18 Councilmember Leventhal,  
19 Look, we're having a good time it's been a long day.  
20  
21 Councilmember Silverman,  
22 You were out looking for Odessa Shannon.  
23  
24 Councilmember Leventhal,  
25 Okay, this is a very serious matter to the church... All right, let's settle down because  
26 we're dealing with issues of great concern to the applicants. If the President is  
27 amenable if the church could have a moment so we could meet the pastor and hear  
28 from him I think it would be appropriate since he wasn't present at the T&E Committee.  
29 If that's all right.  
30  
31 Councilmember Floreen,  
32 Yeah, we just had Ms. Butler at the Committee meeting. I'll just say, I had taken the  
33 view that we could allow this to evolve a bit more, but that was not the Committee  
34 recommendation.  
35  
36 Council President Perez,  
37 Good afternoon, Pastor Libby. Thank you for coming.  
38  
39 Pastor Ron Libby,  
40 Thank you for the opportunity.  
41  
42 Council President Perez,  
43 We appreciate your presence.  
44



November 29, 2005

1 Councilmember Leventhal,  
2 Push your button.  
3  
4 Council President Perez,  
5 If you could hit that button right there.  
6  
7 Pastor Ron Libby,  
8 Oh, yeah, I'm sorry.  
9  
10 Council President Perez,  
11 No problem.  
12  
13 Pastor Ron Libby,  
14 My mic that I use is always on.  
15  
16 Multiple Speakers,  
17 [laughter]  
18  
19 Pastor Ron Libby,  
20 I didn't know I had to push a button.  
21  
22 Council President Perez,  
23 Can you explain, maybe you can walk us through your letter. We've all read it and it  
24 would be useful if you could walk us through it.  
25  
26 Pastor Ron Libby,  
27 Okay, back in 2001 we applied -- we were in negotiation with the Butler property. It was  
28 our understanding at that time because we weren't in contract it had to go in their name.  
29 Our engineer is the one that filed it, and we paid for it, and we've been waiting all of this  
30 time. Apparently there was a rule change in 2003 or 2004, that we just found out about,  
31 that the name had to be changed. Well I don't know if Ms. Butler is here, but we didn't  
32 know anything about it. I don't think she knew anything about it. We didn't find out about  
33 it until last couple of weeks. We have been working with our engineer to try to fix that  
34 problem but the time constraints didn't allow it. During that time we also were  
35 negotiating on the -- more recently on the Hyattstown piece. And Mr. Soukup advised  
36 that we withdraw that request because of distance from the water and the lack of  
37 volume available at the sewer hookup. We don't have the foggiest idea why it took so  
38 long for it to get here -- the 2001 application.  
39  
40 Alan Soukup,  
41 A few comments if I could.  
42  
43 Council President Perez,  
44 Yes, Mr. Soukup.



November 29, 2005

1 Alan Soukup,

2 The 2001 application did come to the Council and was deferred because of the PIF  
3 issues that were raised at the time.

4  
5  
6 Councilmember Floreen,  
7 No applicant.

8  
9 Alan Soukup,

10 With an applicant that was only the property owner. At the time, in 2001, there was not a  
11 requirement in the water and sewer plan that a PIF user had to be the applicant on the  
12 application. That was adopted later in 2003 as part of the plan update. They did apply  
13 under the old rules that we accepted the application without a PIF user. That concern  
14 was raised in front of the Council as part of the packet at the time and in conjunction  
15 with other PIF cases that were coming onboard in that general area. The Council's  
16 decision was to defer those pending review of the PIF policy and the water and sewer  
17 plan.

18  
19 Council President Perez,  
20 When was that again?

21  
22 Alan Soukup,  
23 That would have been in 2002.

24  
25 Council President Perez,  
26 Okay, and also in 2002, if I recall, which was before this Council, that's was when the  
27 decision was made regarding the necessities for the applicant coming forward. That's  
28 actual you actually a decision of over three years ago. The actual first deferral of that  
29 was in September of '01. At the time consideration of the PIF service policy, and then it  
30 was subsequently deferred again -- this is the way these things have gone -- in 2004,  
31 pending consideration of the Rural Zone Impervious Cap ZTA. Do you do -- like at the  
32 conclusion of this annual cycle do you send out letters of notification to everyone? I  
33 know some are here, like People's doesn't need a letter of notification, Bethel doesn't  
34 need a letter of notification necessarily, but what do you do...

35  
36 Alan Soukup,

37 Yes, we work -- we work with Council staff to provide them with a mailing list of all of the  
38 applicants and interested parties concerned with a particular packet that the Council has  
39 acted on.

40  
41 Council President Perez,  
42 Did we -- did you get...

43  
44 Pastor Ron Libby,



November 29, 2005



1 We never got anything.  
2  
3 Alan Soukup,  
4 Well, because your name wasn't on the application.  
5  
6 Council President Perez,  
7 it wasn't in your name.  
8  
9 Pastor Ron Libby,  
10 I understand that.  
11  
12 Council President Perez,  
13 So I'm guessing -- and again I underscore "guessing" -- that if our process worked  
14 correctly Ms. Butler or one of the top dogs or whatever -- what was the name of their...  
15  
16 Councilmember Floreen,  
17 Land barons,!  
18  
19 Councilmember Silverman,  
20 One of the Land Barons!  
21  
22 Council President Perez,  
23 Top dog, I'm sorry.  
24  
25 Alan Soukup,  
26 They would have gotten -- they would have gotten notification.  
27  
28 Council President Perez,  
29 They got notification of what occurred, and the breakdown may have been between  
30 them and you.  
31  
32 Pastor Ron Libby,  
33 I'm sure she did. I'm sure she did. In her discussion with me, she found out about it -- I  
34 found out from her who had just found out about it. That's not to say the mailing didn't  
35 go.  
36  
37 Council President Perez,  
38 Okay, I'm just trying to recreate what occurred because I empathize with your situation.  
39 But things -- a number of things occurred over three years ago. Mr. Leventhal.  
40  
41 Councilmember Leventhal,  
42 Pastor Libby, I -- we're in a situation here regarding -- and you've heard the debate, you  
43 understand we're talking about the Agricultural Reserve which is -- which has unique  
44 treatment in the zoning code. I'm trying to understand -- I always am respectful to men



November 29, 2005

1 of the cloth and I have great regard for your learning and the experience that you bring  
2 to the position. So I hope I do not in any way sound disrespectful. I'm trying to  
3 understand, how could you have sold your land to a residential developer without  
4 knowing if you were going to get a water and sewer hookup on the land that you  
5 proposed to go to?

6  
7 Pastor Ron Libby,

8 Well, at the time this all happened -- this was before all of this -- at least my awareness  
9 of all of this. I didn't know about. This is we're talking about several years ago.

10  
11 Councilmember Leventhal,

12 Did you have a attorney representing you in this transaction with the Butlers?

13  
14 Pastor Ron Libby,

15 Yes, we did.

16  
17 Councilmember Leventhal,

18 I mean this land was not eligible automatically for a water and sewer hookup.

19  
20 Pastor Ron Libby,

21 No, I understood that, I understand that. I understand it was not automatic.

22  
23 Councilmember Leventhal,

24 So you knew there was an element of risk involved in selling the land that you occupy  
25 now.

26  
27 Pastor Ron Libby,

28 Yes, it seemed to be -- at least my understanding at the time that it -- even though there  
29 was a process there was friendliness toward it and that I didn't really perceive there  
30 would be a problem.

31  
32 Councilmember Leventhal,

33 See, I mean, I've been citing three churches as examples of why the concern has been  
34 raised about very, very large institutions locating in the RDT zone that all came at once.  
35 And those three were Seneca Creek Community Church, Bethel World Outreach  
36 Church and Derwood Bible Church. Now I should have been citing four because the  
37 Christian Life Center also -- you're on Darnestown Road?

38  
39 Pastor Ron Libby,

40 Yes.

41  
42 Councilmember Leventhal,

43 Yeah, so I have driven past your church now. I mean -- I mean only respect to you,  
44 Pastor, but it's big. It's real big and so we're seeing a lot of these very large institutions



November 29, 2005

1 all at once moving into this very, very special, very protected area. And that's what gave  
2 rise to the Planning Board's concern and that's what gave rise to the Council's concern.

3  
4 Pastor Ron Libby,  
5 I'm all pretty much [okay] on that now, that's for sure.

6  
7 Councilmember Leventhal,  
8 Okay. Okay. All right. So, I mean -- again and again we're going to have to repeat this.  
9 It's not out of lack of admiration for your ministry and belief that you're helping people  
10 and changing their lives for the better. But we have also made this commitment 25  
11 years ago to this very special part of the County. And all at once all these really large  
12 institutions wanted to there. That's what is giving rise to this new policy. So we hear you  
13 and appreciate your needs, I hope that you find a home for your church.

14  
15 Pastor Ron Libby,  
16 Thank you.

17  
18 Councilmember Leventhal,  
19 But my vote is going to be to protect the Ag Reserve.

20  
21 Pastor Ron Libby,  
22 I understand.

23  
24 Councilmember Floreen,  
25 Okay, if there aren't any...

26  
27 Pastor Ron Libby,  
28 [INAUDIBLE]

29  
30 Councilmember Floreen,  
31 Thank you. Thank you, Reverend.

32  
33 Pastor Ron Libby,  
34 Thank you.

35  
36 Councilmember Floreen,  
37 We wish the church good luck. If there are no more comments on this -- are there? I  
38 can't -- I don't know if there are any lights. Next one is Bethel World Outreach Church.  
39 You will all recall that this one has been waiting for some time. This was before us last  
40 year. And it was their application in particular and Seneca Creek that triggered the  
41 initiation of the PIF Work Group work that has brought us to today. I'll just note that the  
42 Seneca Creek Community Church application is they have -- they no longer have a  
43 contract on their property and so the Committee recommendation on that because there  
44 is no PIF applicant is to deny that one. For Bethel the recommendation of the



November 29, 2005

1 Committee is to approve it. Conditioned upon dedication of 9.6 acres or so of land that  
2 drains into the wild [INAUDIBLE] branch and conservation easement and they're  
3 agreement to total imperviousness of 25%. I believe that are some other -- isn't there an  
4 interest in retaining some amount of farming on the land as well, Ms. [Sears]? We don't  
5 have that as part of their commitment but we were told that previously.

6  
7 Keith Levchenko,

8 Yeah, we did get correspondence from them on that. That was not discussed at the  
9 Committee, but we subsequently received that. The note I have indicates that they  
10 welcome the possibility of putting back into farming up to 75 acres of this property.

11  
12 Councilmember Floreen,

13 So, that is the Committee recommendation for this one, if you look at the map -- let's  
14 see where it is. On Circle 53, to 54, you will see it's just right down the street from the  
15 Catholic property and cemetery and it appeared to us to be an appropriate lost  
16 opportunity for a church in the -- to be served by water and sewer in the RDT zone. I  
17 cannot remember at this point whether or not they could be serviced by a septic system.  
18 But certainly not at this size. But that's the Committee recommendation. It's across the  
19 street and adjacent to current residentially approved development.

20  
21 Councilmember Leventhal,  
22 Oh, I'm sorry. Mr. Andrews.

23  
24 Councilmember Andrews,

25 Thank you. While I have got the floor I wanted to be recorded as voting against item  
26 four. I agree with Council staff and the Planning Board on that item as well, which was  
27 the Church of the Redeemer. My understanding on the Bethel World Outreach Church,  
28 my understanding is that the Committee wrestled with this issue and I can understand  
29 that. The Committee was split on its vote recommending 2-1 for it. I've thought about  
30 this quite a bit and I can't support grandfathering approving water and sewer for this  
31 property. I think that the -- while the arguments are understandable, the arguments for  
32 denying are compelling. I note in the staff packet that the -- while multiple public  
33 hearings it indicates and in written testimony correspondence the Council has heard  
34 about how the new facility will benefit the congregation and the community at large. The  
35 Council has also heard from environmental and citizens' groups as well as individuals  
36 concerned about the inconsistency of this use in the rural zones and in the RDT zone.  
37 In particular -- and the negative land use impacts of this and other developments. It  
38 goes on to note that the Planning Board recommended denial for this request given the  
39 property's location in the RDT zone, where public water and sewer service are not  
40 recommended in the master plan. I think while this is a tough case because of the  
41 timing of the application, it is really the tough cases that make or break a policy, not the  
42 easy ones. And I think that the -- the interest that has to prevail here is in protecting the  
43 Agriculture Reserve for its intended use. and that argues for denying the application for  
44 water and sewer. And so I'll make that motion.



November 29, 2005

1  
2 Unidentified,  
3 Second.

4  
5 Council President Perez,  
6 Okay. Moved and seconded. Mr. Leventhal.

7  
8 Councilmember Leventhal,  
9 I said in Committee, and I'm going to say again now, this is as hard of a vote as has  
10 come before me in my time as a elected official. I think the church makes a strong case  
11 and I know that and I've certainly heard from many of the congregants, and I know that  
12 it's a vital part of the lives of thousands of my constituents. So, it's with great regret I'm  
13 going to vote for this motion made by Mr. Andrews. I think all of us promised that we  
14 would protect the Agricultural Reserve. It's not a simple concept to understand, it is  
15 something that the public doesn't entirely understand. I live down in Takoma Park. I'm  
16 about as urbanized as you get. My neighbors don't -- many of them don't know that we  
17 have set aside a third of the County from development. Often my neighbors say to me,  
18 "You know what we ought to do is we ought to do what Portland did. We got too much  
19 development in the County and we ought to draw a line around the developed part of  
20 the County and just stop it there and not let the development go any further." And I have  
21 to say, "Well, actually, yeah, we did that 25 years ago. That's precisely what we did. We  
22 did it before Portland did it. And we are a national model. We've won awards for  
23 farmland preservation. It is under challenge. It will always be under challenge. I can't  
24 think of a more meritorious use than that use that the church would like to place at the  
25 corner of Brink and Wild Cat Roads, but I do know that as long as I serve on the Council  
26 there will be other meritorious proposals that are not in keeping with the agricultural and  
27 open space purposes of the RDT zone. I truly hope that Bethel World Outreach Church  
28 can find a home. And I will do whatever I can do to assist in identifying a parcel that is  
29 developable. I don't take that lightly. I will work with the church any way that I can. But  
30 we made a promise to keep the RDT zone rural, and despite the offer, which I take very  
31 well, to farm a significant portion of the land, the scope of the development proposed by  
32 the church is not rural and I have to vote for the motion with great regret.

33  
34 Council President Perez,  
35 Mr. Knapp.

36  
37 Councilmember Knapp,  
38 Thank you, Mr. President. I echo many of the sentiments that Mr. Leventhal just made. I  
39 have in opportunity and occasion to meet with many of the representatives with Bethel. I  
40 have made a commitment to work with all of the religious community to try to address  
41 the challenges and needs that they have as they grow in their congregations grow. I  
42 think it's unfortunate because I think the more ad hoc approach that the Council has  
43 taken in the past to reviewing PIF applications, has lead to, first of all a number of  
44 deferrals, which I don't believe is fair and I don't believe is right, and unfortunately



1 Bethel has been hanging out there for a long time in the wind that I don't think is  
2 appropriate. And I think unfortunately that gives the sense of, well, this is not the case,  
3 but kind of making things up as you go. I don't believe it's the case but I see how people  
4 in the audience could reach that kind of a conclusion. I think it's important that we -- we  
5 have to draw lines in order to protect those things that are important. I know there are  
6 those out there that say, "Well, why is the line on this side of the Brink road ,versus is  
7 the other side of Brink Road?" Isn't that relatively arbitrary? I can see how people could  
8 reach that conclusion but the reality is we have made a commitment to the Ag Reserve,  
9 it happened 25 years ago, and we continue to reaffirm that commitment. As Mr.  
10 Andrews said it's the difficult choices that make this and reaffirm that policy. I believe, as  
11 I stated in my comments earlier, that we can do two things. That this is not a either or  
12 situation of we are either for PIFs or we are for the Ag Reserve. I believe that we can  
13 realistically and legitimately be for both and we need to do that. Unfortunately in the  
14 past we haven't necessarily put together a policy that is necessarily as affirmative to  
15 religious organizations and Private Institutional Facilities as I think we need to be so that  
16 we don't create the tension that we have. Unfortunately Bethel has kind of become  
17 ground zero nor this debate for this discussion at this time. I feel badly about that. I have  
18 made a commitment to work with Bethel and to work with other institutions to make sure  
19 they can grow and expand. In fact, I have a map that I just received earlier today of  
20 other parcels that may actually be suitable types of parcels that we can look at. We've  
21 talked about economic incentives. A variety of things that we can explore and I think  
22 that we need to do that. but I think to establish another precedent that has us nibbling  
23 away at the edges of the Agricultural Reserve is a road that we can't and shouldn't go  
24 down. And if we do that now we'll only find more and more ways to do that in the future,  
25 because the pressure will only continue to increase. So I think we need to, as I have  
26 said many times, reaffirm our commitment to Ag Reserve and agricultural policy, while  
27 at the same time create an affirmative policy for how we're going to work with our  
28 religious institutions and Private Institutional Facilities so they can grow and expand to  
29 meet the challenges that they're confronting as well. And I think we need to do that and  
30 we need to do it as quickly as we possibly can. So with that I will be supportive of Mr.  
31 Andrews' motion.

32  
33 Council President Perez,  
34 What is the Planning Board's position on this?

35  
36 Derick Berlage,  
37 This property is located in the RDT zone. The Planning Board has an almost perfect  
38 record of not recommending sewer extensions in the RDT zone. We believe that is a  
39 fundamental threat to the Agricultural Reserve not only with respect to the particular  
40 property, but the prospect that once the sewer is in the ground there is no way to  
41 guarantee it may not some day be extended further. So our position on this particular  
42 application is opposition because it's the RDT zone.

43  
44 Council President Perez,

November 29, 2005



1 Okay. All right, I had a different position and I certainly respect the views of my  
2 colleagues. And part of my position as I reviewed the equities of this was they had spent  
3 a lot of time with people that worked for County government. And maybe they -- there is  
4 a line from "Animal House" that is coming to mind, which I won't repeat because we  
5 may have children watching. If we do we need to get them to turn the channel.

6  
7 Councilmember Floreen,  
8 They should be in school.

9  
10 Unidentified,  
11 [laughter]

12  
13 Councilmember Silverman,  
14 At least there's no cereal marketing on the channel.

15  
16 Council President Perez,  
17 And -- and I guess as I reviewed all of the equities I started with that. That they met  
18 someone who worked for County government, and helped them identify this property.  
19 And I believe led them to believe that the -- the necessary approvals could be attained  
20 and if I had been in that person's shoes I would not have done that. And I wish that that  
21 person had not done that but it was done. I feel rather accountable even though I wasn't  
22 responsible for those actions. And -- and that was for me a fairly significant factor. They  
23 have addressed a number of the issues relating to environmental and agricultural  
24 concerns. I believe we discussed placing an easement on ten acres of the land that  
25 drains into the Wild Cat Branch. Maintaining at least 25 acres or 24 acres of trees on  
26 the property. A cap of impervious surface cap of 25%. Making use of I forgot how many  
27 acres the property is, but 75 of the acres would be actually put into farming. Having  
28 been to the congregation I know that many of the people in their countries of origin were  
29 farmers, so it presented a rather, I think elegant opportunity, to allow people to go back  
30 to their roots. And based on all of those considerations and the amount of time, this --  
31 Bethel was the church that was -- when -- when the bar went down, there is always  
32 somebody if you're coming to the train tracks that is at the front of the line at those train  
33 tracks when that train bar goes down and Bethel was that person. As I understand our  
34 conversations with relating to water and sewer hookup and the grandfathering, the  
35 universe of churches seeking water and sewer hookup in the RDT zone to be  
36 grandfathered pursuant to the very tough policy -- appropriately tough policy we have  
37 just enacted. I believe the universe is one. Which is -- although, well we have rejected  
38 the other one that was the Butler property. And so the only one left -- maybe I should  
39 frame it that way -- is Bethel. So, the issue of floodgates is if one church is a floodgate  
40 then we have a floodgate problem, but those were the issues that motivated me to vote  
41 as I voted and I will continue to do so. Mr. Silverman.

42  
43 Councilmember Silverman,



November 29, 2005

1 Thank you, Mr. President. I think I share Mr. Leventhal's comment that this is probably  
2 one of the hardest votes I've had in 7 years of Council. We closed the door an hour ago  
3 in terms of the future. The question is what do we do with what we have in front of us.  
4 The problem with the policy that we had before was it was ad hoc, but as a practical  
5 matter when the Council consistently votes for things it does give people the impression  
6 this is not going to be much of a problem. I share Mr. Perez's comments about  
7 references that people have made and conversations that undoubtedly took place about  
8 the likelihood of something getting enacted. But, the definition of an ad hoc policy  
9 means that the Council reserves the right to say no. It doesn't mean that there is a  
10 presumption of a yes. And as I said earlier this morning, in support of the broad policy  
11 with regard to the Ag Reserve, we need to do everything we can to protect the Ag  
12 Reserve. And there is a big county out there that is not the RDT zone. My position is to  
13 continue to draw the line where the Ag Reserve is but to provide maximum flexibility in  
14 the rest of this County for Private Institutional Facilities. And that's going to be my  
15 consistent vote through the rest of our deliberations on our overall policy, so that there  
16 are opportunities for Bethel or Christian Life Center or other institutions or schools,  
17 because we never seem to talk about the schools but they're all part of our PIF policy  
18 that there is a opportunity for them to locate in other places in this County. And I will  
19 continue to strive to reach that effort. Which again is a place where I'm going to part  
20 company from the Planning Board in terms of their recommendations outside of the  
21 RDT zone but that's where I am. And I think it's, an unfortunate set of circumstances but  
22 I think it's important for us to draw this line.

23  
24 Councilmember Floreen,  
25 Let me -- I don't know if there is anybody else.

26  
27 Council President Perez,  
28 No, you can have the last word.

29  
30 Councilmember Floreen  
31 What we told Bethel last year is that we would get them an answer on this. and we  
32 apologize for taking this long to come to resolution. I know the church community has  
33 followed this issue with great attention, great interest as has the rest of the community.  
34 The issue -- I'll just, remind us all, this is what we're doing today is ending a 30-year  
35 policy of looking at these things on a case by case basis. And I don't know how long the  
36 Council has approved the extensions necessary to support the faith communities or  
37 private institutions of some sort or daycare centers or elderly facilities or what not,  
38 community service kinds of activities in the RDT. I don't know how long that's been  
39 going on. I'm told it's been a relatively consistent pattern consistent with the idea of  
40 making sure that these kinds of uses did not intrude significantly on the RDT zone. That  
41 has been our priority. But to find a balance. So the challenge is, in looking at the  
42 percentages as we were told during the public hearings and as the workgroup indicated,  
43 the challenge is what point of .7% of the Ag Reserve would be threatened by allowing  
44 one church who had relied upon a consistent pattern by this Council to proceed. And





November 29, 2005

1 the best that can be said is that we told you that we would offer you an answer. I think  
2 it's pretty evident what that is going to be. But the real commitment to the Ag Reserve is  
3 forward thinking and there unfortunately are a few bodies that fall by the wayside and  
4 this is going to be one of them.

5  
6 Council President Perez,  
7 Okay, there are no other lights. Motion has been made and seconded to deny the  
8 applicant. All of those in favor? Mr. Knapp, Mr. Andrews, Ms. Praisner, Mr. Leventhal,  
9 Mr. Silverman, Mr. Denis. Opposed? Ms. Floreen and myself. 6-2.

10  
11 Councilmember Floreen,  
12 Okay...

13  
14 Council President Perez,  
15 Next, number seven.

16  
17 Councilmember Floreen,  
18 Next one, as I said earlier, Seneca Creek lost it's contract on the property when this PIF  
19 analysis was begun last year and as a result there is no applicant for that application  
20 and the Committee recommends denial as a result. Moving right along.

21  
22 Council President Perez,  
23 I'll tell you if there is any lights on anything, and if you hear nothing...

24  
25 Councilmember Floreen,  
26 Let me know. The rest of them are pretty straight forward. Number eight is Spencerville  
27 Seventh Day Adventist Church. The recommendation of the -- they are not on a failing  
28 septic system although they had concerns about it. And as a result, the Committee was  
29 not persuaded that this should be served by public water and sewer, and the Committee  
30 recommendation is to deny their application. Next one is the [Furman] property. An  
31 interesting situation indeed, if you look at the map on page 61 and 62. Bisected --  
32 affected by the relocation of route 29. This one did not have an actual proposed user.  
33 There is no clear proposal for the applicant and consequently the Committee  
34 recommends denial for this one. The following one is the other side of the property. Also  
35 affected by the relocation of Route 29. The Committee recommends deferral on this  
36 one. This is an application that is contemplating a special exception and our preliminary  
37 plan. And while this has not been resolved at the regulatory level we thought it  
38 appropriate because it was a concept for this to allow it to be deferred. And then finally,  
39 just for informational purposes, there is a application associated with the Clarksburg  
40 development outside of the Town Center property, RDT zoning. They have been  
41 approved for a single hookup for the property consistent with the County abutting mains  
42 policy and there is no PIF applicant and so the Committee -- there is no action required  
43 by any of us.

November 29, 2005



1 Councilmember Praisner,  
2 [INAUDIBLE] I'm sorry.

3  
4 Council President Perez,  
5 Yes.

6  
7 Councilmember Praisner,  
8 I'm sorry, we were having a rude conversation. I wanted to talk about Item Number 10  
9 which is your recommended deferral. Whether it's deferral or denial I want to make sure  
10 that the record is clear, that the Council is not taking any position on the special  
11 exception. Because you don't want to influence the Board of Appeals in any way since  
12 there is no special, I'm not sure the status of the special exception but I wanted to make  
13 clear that our actions have nothing, are not to affect the special exceptions. My personal  
14 opinion or position would be with the Planning Board's recommended denial. But  
15 deferral gets you in the same place as long as the deferral is clear that we're not  
16 supporting the special exception.

17  
18 Councilmember Floreen,  
19 No, we hasn't taken a position on it. With that, Mr. President, that's the collection of the  
20 Committee's recommendations. Okay. Within -- really, I don't know, we had the vote on  
21 Bethel and Mr. Andrews registered...

22  
23 Council President Perez,  
24 Ms. Praisner.

25  
26 Councilmember Floreen,  
27 ...and, Ms. Praisner, did you vote in opposition to Church of the Redeemer?

28  
29 Councilmember Praisner,  
30 I voted the same as Mr. Knapp on that.

31  
32 Councilmember Floreen,  
33 On Church of the Redeemer? Okay. But not -- Okay, so otherwise, that is the  
34 Committee recommendation as amended.

35  
36 Council President Perez,  
37 Okay, there was some ambiguity that was expressed about when we had voted on the  
38 policy relating to no water and sewer hookup. And why don't we for sake of the record  
39 it's been moved and seconded -- the Committee recommendation -- so all of those in  
40 favor signify by raising their hand.

41  
42 Keith Levchenko,  
43 Just one point of clarification. The original as drafted by staff it included the November  
44 29 date In order to give you the case by case review that you wanted to do. Since



November 29, 2005

1 Bethel was not approved that language is no longer necessary, so we can strike that  
2 language so it's a straight...

3  
4 Council President Perez,  
5 It is superfluous, and not only that, it's not necessary.

6  
7 Councilmember Leventhal,  
8 And it's redundant.

9  
10 Council President Perez,  
11 And it's redundant. Mr. Denis.

12  
13 Councilmember Denis,  
14 This may have been...

15  
16 Council President Perez,  
17 All those in favor of that as amended by Mr. Levchenko?

18  
19 Councilmember Denis,  
20 This maybe [surplusive], but I just want to make sure I was temporarily out of the room  
21 when number 5 was voted on, the Land Barons.

22  
23 Councilmember Floreen,  
24 We're coming up to that.

25  
26 Councilmember Denis,  
27 I would like to be recorded.

28  
29 Council President Perez,  
30 Okay.

31  
32 Councilmember Denis,  
33 In favor of denial.

34  
35 Councilmember Floreen,  
36 Okay, well, that was Committee's recommendation. So we have a, well for the items on  
37 number 6 we have the Committee recommendation that's been amended by specific  
38 votes. Why we don't we have a vote on the whole package.

39  
40 Council President Perez,  
41 On the whole package as -- with the appropriate caveats noted.

42  
43 Councilmember Floreen,  
44 I'm make a motion with the Committee recommendation.



November 29, 2005

Council President Perez,

Okay, and again we all know what our individual votes were on the individual things so this vote does not in any way effect what we did on that. All those in favor. it is unanimous among those present. And I think that takes us through water and sewer. I'm told Alan is going to stick around for the discussion of predatory lending and lending discrimination.

Multiple Speakers,  
[laughter]

Council President Perez,

I want to thank George Lechleiter for agreeing to stick around.

Councilmember Denis,  
And have I got a deal for you.

Council President Perez,

And we will reconvene at 2:00. That's the time we told people.

[no audio]  
[music]

Council President Perez,

...someone from the Executive Branch. You know, obviously -- my recollection was it Woody Allen who said 90% of the game is just showing up. Somebody didn't go to that movie. Ms. Praisner wanted to make an initial remark.

Councilmember Praisner,

I thank you, I wanted to make a comment of personal privilege. I want to be careful as we are serious about the absence of a executive presence at the table. I have a very good friend whose name was used this morning because obviously she heads the Department of Human Rights and I've known Odessa Shannon since the mid-'70s and worked with her obviously on education issues, and on the Board of Education. And she is a very good friend and she has held very important positions in the federal government as well as for the County government. And Odessa has a strong sense of responsibility and a tremendous work ethic. If she's not here, it's not because Odessa Shannon does not want to be here. I think the question is where is the County Executive position on this legislation? And I want to be careful that my friend whom I would stand with any day on any issue, is not maligned in this process. The office is one that she holds very dear and that she takes with a strong sense of responsibility. I have not made these comments lightly. But I'm concerned about a suggestion that Ms. Shannon is not here because Ms. Shannon -- or an inference or implication that might come out from any of this conversation that Ms. Shannon is not here and that is a lack of



November 29, 2005

1 responsibility because I don't know. And I've known Odessa for so long. The sense of  
2 responsibility is very strong for that woman. So if she is not here I guess I have to ask  
3 why, and I have to ask where the County Executive is on this issue. So thank you for  
4 that opportunity, Mr. Perez.

5  
6 Council President Perez,

7 No, I couldn't agree more. And it's important to point out at the outset what this is about  
8 and what this is not about. The discussion we're having here today. This is not about  
9 Odessa Shannon. She is, as you point out, a person of impeccable integrity. The Office  
10 for Human Rights has participated in every work session we had. She had health  
11 issues, she -- she I think was unable to be at one or two of them but there was always a  
12 representative there. And even when she was a little under the weather she was there.  
13 And so what is abundantly clear to me is what this is not about today, it's not about  
14 Odessa and I do not -- that's an easy question to answer. Was this her idea not to  
15 come? Clearly it was not her idea. I was -- I have attempted to abide by oftentimes what  
16 I call the three Cs, or the four Cs of good government. One is common courtesy, and I  
17 think this Council has been a good body in terms of comity, i-t-y, perhaps not so much  
18 at times in terms of comedy, e-d-y, but I think we have been a courteous body to each  
19 other, and to people who come before us and to the Executive Branch, and frankly  
20 when somebody doesn't come it's a issue of common courtesy. I certainly didn't receive  
21 a call from Doug Duncan or Jerry Pasternak or David Weaver, or anyone, saying she  
22 wasn't going to show up, and I think that's discourteous, plain and simple. There is the  
23 issue of courage, another "C" which is sometimes you have disagreements about things  
24 and come on. Let's we had the disagreements at times in the Committee but we had  
25 those robust dialogs. Sometimes it was passionate. Sometimes I may have gotten too  
26 passionate. Sometimes we all get too passionate. For that I apologize but we had those  
27 discussions and I think that's a important element of a good back and forth is that you  
28 always show up and you have those discussions, even if you disagree with your friends  
29 in the banking industry or wherever. And the final issue is consistency. The main reason  
30 I wanted the Executive Branch here is because I don't quite know what their views are.  
31 Two days after this bill was introduced I was at a conference in Chevy Chase that Eric  
32 was at. It was a well attended conference and the featured speaker was Doug Duncan  
33 that announced his unequivocal support for this bill; no ifs, ands, or buts, no  
34 qualifications. Eric was there, I think you'll recall that, Eric. We then had a public  
35 hearing, mid-December, I believe, of last year. Didn't hear anything at that time about  
36 concerns regarding disparate impact, language, or other issues in the bill. We then go to  
37 Committee after a number of stakeholders have begun to weigh in. And we have a host  
38 of mixed signals that are sent. I will again direct my colleagues' attention to Circle 200.  
39 That was a proposal that was put together, not by Tom Perez, not by Dan Parr, not by  
40 Barbara Flack-Darko, or Rosa Garcia, that was a proposal on disparate impact put  
41 together by the Office for Human Rights, Michael Dennis. That was the position of the  
42 Office for Human Rights back in July when we met. And now I have a rather cryptic e-  
43 mail sent to us 38 minutes ago, today, "Mr. Perez and Councilmembers, I apologize for  
44 not being available today. But I want to reiterate the Duncan Administration support for



November 29, 2005

1 Council efforts to end lending discrimination in Montgomery County. Montgomery  
2 County does not condone predatory lending and I commend the Council for the  
3 leadership -- leadership it has displayed in addressing this matter. When the bill was  
4 first introduced the County Executive made clear that he supports the Council's efforts  
5 to eliminate these discriminatory practices. My staff and I participated extensively in the  
6 Committee work sessions" -- again, I agree with that -- "and provided technical  
7 assistance and guidance." Again, I certainly agree with that. "Circle 200 being an  
8 example of such guidance. The bill as introduced and amended each give me tools that  
9 I need to address predatory lending. The Executive looks forward to receiving and  
10 reviewing your final product. Odessa Shannon." Again reiterating Marilyn's very  
11 appropriate remarks, this is not Odessa Shannon, but if the Executive looks so forward  
12 to receiving and reviewing the final product I would think that somebody on their staff  
13 could have made time this afternoon to come over and have a debate, because I don't  
14 know what their position is at the moment on the issue of disparate impact. We had  
15 something on July 30th. I think there is now a e-mail from Jerry Pasternak saying "We  
16 support the Committee's version of the bill. I expect a memo saying that will be sent to  
17 the Council..." This was dated Thursday November 17th. I have not received a memo  
18 from Jerry Pasternak, has any... Mr. Lakefield have you received a memo from Jerry  
19 Pasternak? "We support the Committee's version of the bill. I expect a memo to that  
20 effect will be sent to the Council."!

21  
22 Mr. Lakefield

23 I received one from [INAUDIBLE]

24  
25 Council President Perez,

26 That's the memo from Odessa Shannon. I guess this constitutes that memo sent at 1:43  
27 on Tuesday, November 29th, 2005. The three paragraph memo stating what their  
28 position is on this bill that addresses a critical issue involving the affordable housing  
29 crisis in this County and it's adverse impact on certain communities. Again, let me take  
30 you back to the photo. This morning, this is high minority tracks in Montgomery County  
31 to my left. To my right is where you have disproportionate numbers of subprime loans,  
32 and I would respectfully submit -- What is this area, by the way, Marilyn? Is that Olney?

33  
34 Councilmember Praisner,  
35 No, that's Damascus.

36  
37 Council President Perez,

38 Okay, with the notable exception of Damascus we appear to have a photo that fits like a  
39 glove. Where you have high concentration of minorities in Montgomery County you  
40 have high concentrations of subprime loans. Let me reiterate my disclaimer that I  
41 reiterate every time I say that. Not all subprime loans are predatory or discriminatory,  
42 but regrettably discriminatory -- regrettably predatory lenders and other lenders  
43 engaged in discrimination have found a beachhead in the subprime market. And I can  
44 cite 88 different studies that time and time again demonstrate that. That's why this is an

November 29, 2005



1 issue of such importance and putting aside the issues of courtesy to the Council. The  
2 concern I have as we begin is what sort of message does it send to the community?  
3 The goal of this initiative is to give the tools to the Office for Human Rights so that it can  
4 do a better job of attacking an issue that we all unanimous agree is an issue of public  
5 concern. We're trying to send a message to the community about that. And yet, we can't  
6 have a conversation with a live body from the affected agency. And again, I'll reiterate  
7 my disclaimer it wasn't Odessa Shannon's doing, but its really hard if you're going to a  
8 fair housing group in Montgomery County to say we want you to do business with  
9 Montgomery County. It they're watching today, the silence is deafening from that side of  
10 the table. The absence is noteworthy. And it's really hard when you're trying to build that  
11 third leg of the civil rights enforcement stool. The leg -- the federal leg and the State leg  
12 are very rickety because these administrations don't give a darn about civil rights. And  
13 so we need to build up the local leg of that stool. And we need to send a message that  
14 we want to be a player. I know Odessa Shannon wants to be a player and I think Doug  
15 Duncan wants to be a player. But these actions belie the assertions. That's why the  
16 absence is beyond a discourtesy to the Council it does harm to the efforts that George  
17 Leventhal and Steve Silverman and myself and everybody who has been involved in  
18 this bill it really does a disservice to those efforts to make our County government and  
19 our County Office For Human Rights and our County Office of Consumer Affairs -- it  
20 does a real disservice to our efforts to become a real player, because at the moment I  
21 think we would agree we're not a player. That is to say County government. We're not a  
22 player in the battle against lending discrimination. We want to become a player. We  
23 want to say to the public our door is open. Our statutory tools are strong. And we want  
24 to be there for you. We care about you. That's the message we want to send. I'm fearful  
25 that we're not -- we're sending at a minimum some mixed messages this afternoon. And  
26 that's regrettable. Regardless of what we do. So, we'll move forward. I'm not going to sit  
27 here and wait for someone in the Executive Branch. I actually took a look at our at our  
28 County charter and there is a provision in the charter that -- I think it's 209, which talks  
29 about the County Executive shall provide Council with any information can concerning  
30 the Executive Branch that the Council may require for the exercise of its powers. That's  
31 section 209 of the charter. I'm not going to sit here any longer and attempt to get  
32 information from an Executive Branch that appears to be unwilling to clarify its positions.  
33 We'll just move forward. And see where we can go. So let's start out with the easy stuff.  
34 Mr. Leventhal, there were a number of I think technical...

35  
36 Councilmember Leventhal,  
37 Yeah, I gave it to you.

38  
39 Council President Perez,  
40 That's always trouble.

41  
42 Councilmember Praisner,  
43 [laughter]

November 29, 2005



1 Councilmember Leventhal,  
2 I assume this is all right. We have an amendment. This is a complex bill and there were  
3 a number of references to different actors in the lending process that unintentionally  
4 excluded other actors and this should not be controversial. As currently drafted  
5 Subsection C does not include mortgage bankers. To be consistent with the other  
6 provisions of the law this section should be amended to include -- and to replace the  
7 word "mortgage broker" with the word "person." So, that Subsection C would now read  
8 "Provides compensation paid directly or indirectly to a person from any source." Rather  
9 than "a mortgage broker." What line of the bill? Sonya, help me find this on the bill, will  
10 you?

11  
12 Sonya Healy,  
13 It's on 200...

14  
15 Councilmember Leventhal,  
16 Line 200 of the bill.

17  
18 Sonya Healy,  
19 ...Circle 9.

20  
21 Councilmember Praisner,  
22 Way back there.

23  
24 Council President Perez,  
25 Circle 9!

26  
27 Unidentified,  
28 Can we have a copy of the [INAUDIBLE]?  
29

30 Councilmember Leventhal,  
31 We can certainly have it circulated. It looks like our excellent staff does indeed have it  
32 ready, at hand.

33  
34 Councilmember Praisner,  
35 Just strike "broker" and put "person"?  
36

37 Councilmember Leventhal,  
38 On 200 of the bill, Circle 9, where it says "Provides compensation paid directly or  
39 indirectly to a mortgage broker from any source..." The new language would be  
40 "Provides compensation paid directly or indirectly to a person from any source."  
41

42 Councilmember Praisner,  
43 [INAUDIBLE]  
44





November 29, 2005

1 Councilmember Leventhal,  
2 This should not be controversial.

3  
4 Council President Perez,  
5 No, I think it's -- I think it makes it a little better.

6  
7 Councilmember Leventhal,  
8 Okay. Okay.

9  
10 Council President Perez,  
11 I appreciate Mr. [Levitan]. I thought I saw him here somewhere. There he is. Thank you  
12 for your input. Without objection it will be, so noted.

13  
14 Councilmember Leventhal,  
15 Okay, I also need to make a statement for the record, as follows the provisions in  
16 Section 27 -- and I will give it this to the clerk for the record and Sonya just distributed it.  
17 The provisions in sections 27-12, Paragraph C Subsections 1 and 2 are not violations of  
18 the law, if a person is not engaged in these behaviors. Those behaviors being steering,  
19 implementing excessive points or fees, or providing compensation to a person based on  
20 one of the classifications line 170 through 173. That's just a statement for the record  
21 that the clerk has. Thank you, Mr. President.

22  
23 Council President Perez,  
24 Okay. Were there any other amendments of that variety?

25  
26 Councilmember Leventhal,  
27 I don't think so.

28  
29 Council President Perez,  
30 Okay great. Circle, I'm sorry, agenda -- Agenda Item Four, Addendum, is the testimony  
31 that was received in December of 2004. And I think it's useful to give a little bit of  
32 refresher course because noting what the bill was, what the concerns were raised. And  
33 what the bill currently is I think it's very important to understand that. If you were to look  
34 under the initial -- the items in the Addendum Agenda Item Four, that was the initially  
35 set of concerns that were raised by people in the banking industry -- I will note, I saw  
36 Meredith here before, the realtors testified in support of the bill. A number of people in  
37 the faith community, nonprofit community, et cetera, testified in favor of the bill. I'm -- I  
38 still recall the testimony I read from one of the publications from the industry which I  
39 don't have at my finger tips. Someone who was a -- obviously not speaking for the  
40 industry, because she said it was a good bill. And -- and so, we had those issues but  
41 the concerns that were raised early on, number one was the concerns about what was  
42 noted as C1 in the original bill. And let me take us to those areas, Page -- Circles 8 and  
43 9. There were a number of concerns raised about the use of language such as "tangible  
44 net benefit," words that were considered predatory lending words. The reason I bring

November 29, 2005



1 this up is if you look at the bill that we unanimously -- or the amendments that we  
2 unanimously adopted as a Committee, we affectively took the advice of the banking  
3 industry. They wanted those removed and we unanimously acceded to those requests.  
4 There was the second issue which was raised and I invite anybody to look at Addendum  
5 Four because you will see the other issue raised was the issue of whether or not the --  
6 there needed to be a damages cap. And we had a discussion, if I recall correctly, about  
7 whether we needed to have a damages cap. Our goal in introducing the bill was to  
8 establish parallel structure between local law and federal law. Nothing more, but nothing  
9 less. And under federal law a person who is a victim of lending discrimination is eligible  
10 to get actual damages. Those are not my words those are the words of the federal  
11 provisions. There's no cap there, it doesn't say "actual damages of \$200,000" or  
12 \$500,000 or whatever, it just says "actual damages." The Committee -- again the  
13 bankers raised a concern and our County Council Attorney and the County Attorney  
14 agreed that if we didn't have a cap on that issue of damages, that we might subject  
15 ourselves to legal trouble, should this statute be challenged. So I -- I don't necessarily  
16 agree with that, I actually think there are a number of legal opinions out there to the  
17 contrary. But I voted 3-0, I voted with the majority to establish a cap of \$500,000, which  
18 I will readily concede as certainly more than -- it's exponentially more than the \$5,000  
19 cap, which was a joke. But again, an illustration of we had some legal advice of our  
20 County Attorneys an the Committee unanimously agreed to accept that. Those were the  
21 issues. If you look in Addendum Four, Agenda Item Four, look for issues regarding the  
22 discussion of the issue of disparate impact. I don't think you will find it. Those weren't  
23 raised in December. Once the industry got the revisions on C-1. We got the cap. Then  
24 the next issue that they then moved onto was the issue of when we should codify the  
25 disparate impact standard. Mr. Silverman asked a very good question. We had an entire  
26 session on this in the Committee. And his simple question was what is the law  
27 currently? Do we currently have the authority under applicable law to proceed under a  
28 disparate impact theory? Because we will all agree that the language is not in the  
29 statute. Our bill, Mr. Subin, Ms. Floreen, and I, our bill codified it. And we codified it  
30 because we believed we need a civil rights insurance policy. The feds and the State --  
31 the debate about Samuel Alito is the debate about a lot of things including, but not  
32 limited, to civil rights, and whether this country will move forward or backward on civil  
33 rights. And so we spent a whole session and we got some advice from Mr. Hansen -- or  
34 actually Mr. Royalty, and we got some advice from our very able County Council  
35 attorneys and the question presented again was, do we have that authority currently?  
36 The answer from our very able County Attorney: yes, we do have that authority  
37 implicitly, the case law gives us that authority. The answer from Mike Faden, Sonya, we  
38 currently do have that authority. The answer from a number of people in the fair housing  
39 community who litigate these issues all of the time. We do have that authority and a  
40 string site of cases from nine different courts of appeal affirming that we have that  
41 authority. Which raises a fair question. If we have this authority why do we need to  
42 codify it? As I said this morning, that answer was frankly -- and I appreciate the candor  
43 and the ethical candor of the banking industry on this issue, because they could have  
44 gone along with us. And if they had just gone along and said, "Well, we agree with



November 29, 2005

1 them," well then perhaps there would have been a legitimate question about why do we  
2 need it? Why do we need a belt and suspenders, why do we need a civil rights  
3 insurance policy? But they were truthful, and their answer was, "We disagree with Cliff  
4 Royalty, we disagree with Mark Hansen, we disagree with -- with Sonya [Boeing], and  
5 we disagree...

6  
7 Councilmember Praisner,  
8 Healy. Healy.

9  
10 Council President Perez,  
11 No, Healy. Sorry, I was looking at Sonja [Boeing] a little while --they disagree with Sonja  
12 [Boeing] too, I know it. I know she did. She said something they disagree with.

13  
14 [laughter]

15  
16 Council President Perez,  
17 And they disagree with Mike Faden. "We see no such issue, we see no implicit right.  
18 And, in fact, if you pass this law, we're going to fight you and take you to the Court of  
19 Appeals." So the most compelling answer to the "Why is this necessary" question, was  
20 this provided by the attorneys for the bankers. This is necessary because they're going  
21 to fight us tooth and nail as we attempt to put in place, a explicit scheme and as people  
22 know who litigate cases before Courts of Appeals and trial courts, the first thing a court  
23 will look at in answering the question is there a cause of action for disparate impact in  
24 lending discrimination. The first thing you do -- it's Statutory Construction 101, look at  
25 the plain language of the statute. The plain language of the County Human Rights  
26 Ordinance is silent on this issue. There is an effort a foot and it began in the mid-'90s  
27 and it was lead by the banking industry -- and I don't begrudge them -- I sat in meetings  
28 with Janet Reno where she looked folks in the eye and said, "Sorry, disparate impact is  
29 the law of the land and that's what we're going to be doing, that's how we're going to be  
30 applying the law." We think you're wrong on that and that's what she said. There has  
31 been an effort afoot to change that. The battle over Samuel Alito is the battle over civil  
32 rights. That's why it's very important to build redundancy into antidiscrimination efforts.  
33 By redundancy I mean, we have a federal system that we don't control. It's the Bush  
34 administration. We have a State system that we don't control. The Ehrlich  
35 Administration. And so we need redundancy. We need the ability at the County level to  
36 do these things because if, God forbid, if we end up with case law that reverses the rule  
37 that you can bring a disparate impact case we're in trouble. Unless of course, we write it  
38 into the law. And so, I asked the legal question, of people like Cliff Royalty, and Mike  
39 Faden, and Sonya Healy -- and I may have asked Sonja Boeing when I walked out of  
40 the room I don't recall -- I asked them, "In your legal opinion, would it be useful because  
41 Cliff Royalty in his opinion, on Circle 102 [ad sec] noted it was currently redundant and  
42 the question presented was, as a legal matter, are you better off if the bankers do what  
43 they have promised to do. Are you better off with something explicitly written into the  
44 law? Or are you better off with it silent? I believe Mr. Faden's answer was it saves us a



November 29, 2005

1 trip to the Court of Appeals. Let me stop for a moment, Mr. Faden, am I getting your --  
2 did I misstate your recollection?

3  
4 Mike Faden,  
5 That's right.

6  
7 Council President Perez,  
8 Okay, and I believe, and it wasn't Cliff who was there that day it was Nancy Appel, I  
9 asked the same question of her. She may be over at the Executive Branch today, as  
10 well. I appreciate, Mark, you were able to make it over here, we always value your  
11 presence -- She gave the same answer. That it would be useful to have. And the caveat  
12 that was in your opinion of Cliff Royalty's and it's a fair point was that if we're going to do  
13 this, that is to say codify disparate impact do we then have a doctrine of unintended  
14 consequences, where by we are, by implication, saying in other context, like  
15 employment, where you have a human rights ordinance, are we implicitly saying that we  
16 don't have that cause of action. And again, our very able staff drafted on pages -- on  
17 page 8, some language that addresses that. Because, in the end, it's a very fair point.  
18 And it's very easily addressed through some wordsmithing. And the wordsmithing was...  
19 "Nothing in section 27-12 effects or limits the types of claims that people may make, or  
20 the theories of liability that a person may pursue in any complaint or filing before the  
21 commission, the Office of Human Rights, or any other agency or court which arises  
22 under any other provision of chapter 27." The addition of the discriminatory effects  
23 provision in 27-12 C3 is not intended to indicate that a disparate impact claim is not  
24 cognizable under any other provision of Chapter 27. Let me go for a moment to what  
25 our friend Odessa wrote. Unfortunately she's not here, and again, through no fault of her  
26 own. Her position today, or as of November 21st...

27  
28 Councilmember Leventhal,  
29 [sneezing]

30  
31 Council President Perez,  
32 Bless you, George.

33  
34 Councilmember Leventhal,  
35 Thank you.

36  
37 Council President Perez,  
38 You're quite welcome. in other words, if in the future we use disparate impact in an  
39 employment case -- which we do very often; or in a rental case -- which we do very  
40 often; or in a public accommodation case -- which we do very often -- we will be  
41 challenged because the law is silent in these areas -- attorneys will argue that because  
42 disparate impact is specifically spelled out under lending the intent is that it not be used  
43 in the other areas. This would hamper our ability to process cases using the appropriate  
44 theory. We have that authority because it -- it is not spelled out anywhere in the law.

November 29, 2005



1 Again, if Odessa or someone from the Executive Branch were here, I would ask the  
2 question, doesn't the language on page 8 address your concern? I believe our Council  
3 Attorney said it does. I believe Nancy Appel opined that it does address that concern,  
4 and I believe we had a discussion that in addition to this we could introduce another bill  
5 that codified the standard in the other settings so that it's crystal, crystal clear. On this  
6 issue the majority of the Committee did not take the advice of the attorneys. It instead  
7 agreed with the bankers that we don't need to codify disparate impact, and we don't  
8 need to accept the language that Michael Dennis of the Office for Human Rights drafted  
9 at Circle 200. The Committee majority decided that the position of the bankers was the  
10 correct position and it was unnecessary. I disagree, I disagree very strongly, and  
11 frankly, we compromised and compromised and compromised on this bill. And, it was  
12 my goal to make sure we put our best foot forward not simply a foot forward. We have  
13 done a number of good things in this bill, but we could do better. We have a bill in  
14 Maryland on predatory lending that is an average bill, it could be better. But because the  
15 General Assembly is a much more conservative body it was the best they could get  
16 under the circumstances. I was hoping that we could do better than that here in the  
17 County Council. I don't know the answer to the question, because I don't have someone  
18 from the Executive Branch here to answer. But I guess, Marc, because you're the  
19 closest thing to someone from the Executive Branch I will have to ask you the question.  
20 I read from the most recent missive of Odessa Shannon about the issue of consistency,  
21 and it was noted in your -- the memo written by Cliff Royalty which is at Circle 102 [ad  
22 sec] if we amended -- the issue there is consistency. Are you -- do you have their -- do  
23 you have the packet, Marc?

24  
25 Marc Hansen,  
26 Yes, I do.

27  
28 Council President Perez,  
29 Okay, if you turn to Circle 102. There's a second last full sentence of last full paragraph.  
30 "Of course Chapter 27 could be amended to clarify that all forms of discrimination can  
31 be proved through all forms of disparate impact." If that happens -- do you want me to  
32 reread what Odessa said about her concerns, or did you get the gist of it?

33  
34 Marc Hansen,  
35 I think I -- I got the gist of it.

36  
37 Council President Perez,  
38 If we amended the law to make clear that all forms of discrimination for which disparate  
39 impact is a cognizable theory could be pursued under the Human Rights Ordinance,  
40 would that address that concern?

41  
42 Marc Hansen,  
43 Mr. Perez, I can only speak for myself...



November 29, 2005

1 Council President Perez,  
2 Legally?

3  
4 Marc Hansen,  
5 and I think Mr. Royalty as well, I think I signed this memo as well as Cliff did.

6  
7 Council President Perez,  
8 Yes, you did.

9  
10 Marc Hansen,  
11 I spoke with Cliff actually before I came over here.

12  
13 Council President Perez,  
14 He was tearing down a billboard somewhere.

15  
16 Marc Hansen,  
17 Very well may have been. Our view is that the safest thing to do, the best insurance that  
18 you could buy if you were to move to codify disparate impact test, would be to do it by  
19 legislation that would apply to all of Chapter 27. That was our position in the memo and  
20 that still remains our position.

21  
22 Council President Perez,  
23 And let me ask you a follow-up question. If we were to do that, would it make it easier  
24 for you to defend. We heard from the bankers that if -- if we enact this law, and an  
25 action is brought they're going to challenge this law, and they're going to challenge  
26 disparate impact. Is it harder or easier to defend when you have codified disparate  
27 impact in Chapter 27 throughout?

28  
29 Marc Hansen,  
30 Well, to be perfectly candid, I think it would depend on what the actual codification said.  
31 In other words whatever standard the statute adopted, there are, as you're aware,  
32 various standards and various circuits as to what is disparate impact, and what sort of  
33 defenses can be raised once disparate impact is first shone.

34  
35 Council President Perez,  
36 Assuming that was the standard that has been applicable in this circuit. Would it be  
37 harder or easier in your judgment to defend against a lawsuit challenging disparate  
38 impact. Is it easier to have it in the plain language of the statute, or is it harder?

39  
40 Marc Hansen,  
41 Well, again the Fourth Circuit hasn't directly addressed the issue of disparate impact in  
42 lending cases. They've done it in fair housing cases, and if you were to adopt the  
43 identical standard. I think that's of some help, yes. Would it be absolutely -- you know,  
44 would the -- would nobody ever raise a challenge, no I wouldn't say that.

November 29, 2005



1  
2 Council President Perez,  
3 I'm not asking you whether it's going to stop someone from suing. I'm asking you does it  
4 put you in a better position in the event that we have a challenge to the law? Or,  
5 alternatively, that the banking industry lobby is successful in persuading a court to say,  
6 "The heck with disparate impact, you're out of luck."!

7  
8 Marc Hansen,  
9 It certainly -- probably eliminates the first issue as to whether disparate impact is or is  
10 not implied into the statute. But then it will raise the issue as to when the standard we  
11 adopted is the correct standard.

12  
13 Council President Perez,  
14 Of course. Okay, and of course then -- you didn't answer the second part of my question  
15 ,which is if the, you know, if -- if -- I mean the Fourth Circuit is a horrible circuit for civil  
16 rights. Rule number one I teach my students at Maryland Law School is don't go into  
17 federal court. The Medicaid case is a State constitutional claim, because you want to  
18 stay the heck out of federal court if you're trying to vindicate civil rights. So my second  
19 question is if you ended up with a hostile court decision then -- which says, "You can't  
20 use disparate impact, it's no longer implied," but we have explicitly put it in our statute  
21 would you agree that we're better off from the standpoint of protecting victims of  
22 discrimination using that theory?

23  
24 Marc Hansen,  
25 In that legal issue, yes, you're better off having it in the statute. Okay. Do you agree Ms.  
26 Sealy and Mr. Faden with Mr. Hansen's analysis?

27  
28 Mike Faden,  
29 Yes, we do.

30  
31 Council President Perez,  
32 You do, okay. Well, I'm -- I've -- I know Mr. Subin is -- I think he went to the interment,  
33 which was --!

34  
35 Councilmember Praisner,  
36 No, he had something at court, I thought.

37  
38 Council President Perez,  
39 Okay, but I am more than willing -- so I think what I'm hearing you say is we can clear  
40 this up by introducing a bill that addresses Chapter 27 across the board. That's how I  
41 read your memo.

42  
43 Marc Hansen,  
44 That would be what we think is the best response to the legal issue we raised, yes.



November 29, 2005

1  
2 Council President Perez,  
3 Okay, I want to ask you now, because I'm concerned when we take this bill up you  
4 might not be here.

5  
6 Councilmember Praisner,  
7 He's been reliable.

8  
9 Council President Perez,  
10 Pardon.

11  
12 Councilmember Praisner,  
13 He's been reliable.

14  
15 Council President Perez,  
16 Well, so is Odessa. [laughter]

17  
18 Councilmember Praisner,  
19 No, but I mean having a County Attorney present at the Council meetings is...

20  
21 Council President Perez,  
22 Okay. Well good. Well, then, I'll-- I'll be happy to do that. And we will -- I guess these  
23 are, you can consider this marching orders, Mr. Faden and Ms. Healy, if you could draft  
24 a bill that addresses the issues of disparate impact throughout Chapter 27, where it's  
25 applicable. I would like to try and introduce that before the end of the year. I think that  
26 would be a wonderful way to address the concerns. If Odessa Shannon or someone  
27 from the Executive Branch were here, I would ask them the question "Does this address  
28 your concerns?" I might get an e-mail soon or something from someone that, is  
29 regrettable. [beeping] There we go! No. So, we'll go with that. Mr. Leventhal.

30  
31 Councilmember Leventhal,  
32 Well, Mr. President, your analysis and colloquy here has dealt with the issue of when  
33 the disparate impact is going to be sustainable in a court challenge and we'll look  
34 forward to the results of the request that you've made of staff. There have been a  
35 number of issues raised about the effect -- the economic effect of what happens when  
36 lenders are under a standard that they don't feel provides them with due process, and  
37 they don't feel they have any adequate defense against and that they're subject to  
38 forces that are beyond their control. As a matter of fact going to my notes... in Brown  
39 versus Artery Organization, Inc. et al, the U.S. District Court for the District of Columbia  
40 found that when a private party is the defendant proof of discriminatory effect alone is  
41 not enough, and some proof of discriminatory intent must be shown before plaintiff can  
42 be found to have established a prima-facie case. Judge Harold Green in rejecting the  
43 disparate impact test for nongovernment defendants noted that the test would make  
44 private defendants responsible for the consequences over which they have no control.



November 29, 2005



1 As a result of believing there is no due process and no ability to control the  
2 circumstances under which they would be subject in a disparate impact situation  
3 Councilmembers have before them material from Fannie Mae and Freddie Mac that  
4 suggest that loans that come under a disparate impact test would not be purchased in  
5 the secondary market and Standard and Poor's has a list that have enacted very  
6 restrictive statutes and have said that bonds for those notes are not ratable. I raise this  
7 only to say that although you have made a good case that disparate impact is indeed in  
8 use now and there is no indication that it is and we have -- back when we were in  
9 communication with the Executive Branch we have documentation from the Office of  
10 Human Rights stating that disparate impact in use now. Codifying it may pose economic  
11 issues that are not addressed in the colloquy that you have been engaging in. I hope  
12 that the outcome here is where I think we're headed, which is that we will adopt the bill  
13 that I think is a strong bill and I commend you for racing the issue that the HSS  
14 Committee approved. I hope we can do it in the relatively near-term, it's been a long  
15 day. And I appreciate your efforts on this issue and I appreciate the commitment you  
16 bring to this issue. I don't want to -- because I know you're very strong about the written  
17 record and you've been very referred to it extensively here. I don't want to close today's  
18 written record without at least pointing out that there are issues other than simply the  
19 issue of litigation, there are also issues about economic impact and that those will also  
20 bear review at such time as the Council takes up revision -- an overall revision to  
21 Chapter 27, which I look forward to entering into the conversation with you in the future.

22  
23 Council President Perez,  
24 Mr. Silverman.  
25

26 Councilmember Silverman,  
27 Thank you Mr. President. Just a couple of comments. It sounds like, based on what --  
28 and I gather we're going to have this discussion at another point next year, but what  
29 struck me about Mr. Hansen's comment was that while Mr. Faden did suggest during  
30 our Committee work sessions that we might save a trip to the Court of Appeals by  
31 codifying the standard of disparate impact in lending cases, That it sounds like based on  
32 what Mr. Hansen said we'll be going to the Court of Appeals anyway. The issue is not  
33 just is there a codification, the issue is what does it say. We're kidding ourselves if we  
34 think that -- if there hasn't been disparate impact lending cases brought in Montgomery  
35 County, when they do get brought, which I'm sure they will, which I'll get to in a minute  
36 under what we're about to pass today, I would suspect that there will be a trip to the  
37 Court of Appeals under any circumstances. And the reason why I think there will be a  
38 trip, and why I'm very proud that we're actually going to take a major step forward today,  
39 is because, we've spent all of this time and we've spent an extraordinary amount of time  
40 in Committee discussing whether to codify disparate impact, and oh, by the way we  
41 have just increased the penalties by 100 times under Montgomery County law. 100  
42 times. It's not \$5,000 for embarrassment and humiliation, it's \$500,000. Now if Mr. Subin  
43 were here there would be a majority of the Council who would be lawyers. There are  
44 enough lawyers in the room. I used to practice, although not this...

November 29, 2005



Council President Perez,  
You used to play one on TV.

Councilmember Silverman,

That's right, this -- I don't practice in this area. This is the way that the discussion is going to go with lending industry attorneys when this bill passes. And by the way I share Mr. Leventhal's concerns about Fannie Mae and Freddie Mac. Here is what the discussion is going to be. A lender is going to ask his attorney -- his or her attorney -- what are the consequences and exposure, the legal term exposure, of the Montgomery County legislation? And the lending industry attorney is going to say presumably what they told us in Committee, which is "well, we have good news, and we have bad news." Here's the good news. The good news is they didn't pass disparate impact legislation in terms of codifying it, but you should know that everybody in the world except for us, the banking industry, thinks that that is actually what is the current standard under the law. The County Attorney thinks that. The Council's Attorney thinks that and I believe, Mr. Perez, the expert that you brought into one of our Committee work sessions felt exactly the same way. But we the banking industry don't feel that way, so the good news is there isn't any codification. Here is the bad news. If we're wrong, if we're wrong, we have just given you advice that will cost you a half million dollars per violation. So figure out how many loans you're doing in Montgomery County and you can figure out what kind of risk you want to take. You want to take ten loans what is a average loan. Couple hundred thousand dollars for the kind of loans we're talking about here? Do you want to take the risk that you're going to have a practice in place that not only will end up creating a clear impression that you are conducting your practices in a predatory manner, which nobody wants the publicity about, but more importantly you -- you could end up with millions of dollars in fines. Millions of dollars in penalties under this legislation. That's the result of this. And I would respectfully say that any attorney that is going to sit down and give his client some advice about this is going to say, you got to decide whether you want to take the risk or whether or not you want to end up having a practice that is absolutely clean -- and where you will not in effect, say we'll figure out a way to take it down to the Court of Appeals. Because I would respectfully suggest that the deterrent impact of a half million dollar per violation penalty is going to be extraordinary in terms of either changing the practices in Montgomery County, or allows folks to file claims in Montgomery County that they might not have filed before, because at \$5,000 for humiliation and embarrassment, who's necessarily going to bring the case? We're having this discussion in the context which I think is unfortunate that somehow or another the banking industry is going to succeed here. The banking industry has made it very clear from day one they do not want us to pass legislation. They took the position that we were preempted, that we had no ability to back door a predatory lending statute under a claim of discrimination. That the penalties were too high. Even at \$500,000. I think I would have to go through a volume, a box full of documents that we have. I think they were very comfortable when staff recommended a \$50,000 humiliation and embarrassment provision. But we took that up another ten



November 29, 2005

1 times on top of that. So I don't think anybody in the lending industry is going to be  
2 celebrating if we do what -- what I believe we will do which is to pass this legislation.  
3 This is going to be a very strong bill which is going to send a clear message that  
4 predatory lending must stop in Montgomery County. If you don't stop we're going to hit  
5 you with millions of dollars of penalties. That's the message that is going to be loud and  
6 clear to the lending industry. And while I respect my colleague's leadership in brings this  
7 to the table I think it does clarify what is already the law, which is you can't discriminate  
8 lending practices anyway. But while this clarifies it and I think it's a major step forward,  
9 its unfortunate that we're not in effect going to be able to declare victory today in the fight  
10 against predatory lending, but we will have Chapter Two at some point next year about  
11 the broader issue of disparate impact with no certainty about whether we will bring the  
12 matter to a conclusion. I would hope we would be able to move on, that people would  
13 be able to file claims if they have been reluctant to do it, and that we will be able to send  
14 a clear message by a vote today to the lending industry that predatory lending practices  
15 have to stop.

16  
17 Council President Perez,

18 The challenge that I have, respectfully, Mr. Silverman, is if you can't prove liability, you  
19 can have a \$5 million cap on damages and it will be meaningless. And the battle over  
20 disparate impact is the battle is the battle over how high a bar do you set for proving  
21 that someone has discriminated? And that is the conversation that we have been  
22 having. And so I supported the effort to raise the threshold of damages from \$5,000 to  
23 \$500,000. It is important to note that that \$500,000 is not limited to predatory lending  
24 cases or discrimination in lending cases, it applies to everything we do, employment,  
25 public accommodations, all the work done under the statute, but if you -- if we're left in a  
26 few years, and I see where the civil rights landscape is attempting to head, in the eyes  
27 of some, and that is eliminate disparate impact in every circumstance. Well, it's really  
28 going to be a rather pyrrhic victory, which is why we have to continue our discussion and  
29 move forward. We've taken a step forward, but have we put our best foot forward? I  
30 would respectfully submit that we haven't. I'm looking forward to the conversation -- or  
31 continuing the conversation about economic impact, we tend to have that with every  
32 regulatory action we take, and we had that, I recall, with living wage, we had it with the  
33 smoking ban, we had it with cable modem regulation, and it's always a fair discussion to  
34 have, and questions are raised. I would simply note the difference between living wage,  
35 cable model, and smoking bans, where if they were new, attempting to put in place new  
36 things, this is codifying something that people are already required to do, and so I have  
37 had difficulty with the economic impact argument of saying the only thing that's different,  
38 you are already required to do this. Only thing different is that we are saying that the  
39 County is a player in this. We've already implicitly said that, now we're explicitly saying  
40 that, and I'm having difficulty understanding how going from implicit to explicit suddenly  
41 has an economic impact, but those are fair points that we will discuss, and I look  
42 forward to discussing those in the weeks and months ahead. I do think we've taken a  
43 step forward. I appreciate the work of my colleagues and the Council staff and all the  
44 stakeholders who have been involved in this. Mr. Subin...



November 29, 2005

1  
2 Councilmember Subin,  
3 [INAUDIBLE]

4  
5 Council President Perez,  
6 And, Mr. Subin, I'm going to get to you in a minute. I'm going to Mr. Leventhal first,, but I  
7 just wanted to bring you up to speed on where we're at, which is we've had a  
8 conversation with Mr. Hansen and Mr. Faden and Ms. Healy about the prospect of  
9 coming back at a very -- at the earliest convenience with a bill that addresses the  
10 concern that was raised by the County Executive's office through Odessa Shannon  
11 about consistency. And, by the way, I haven't heard the heard the argument about  
12 economic impact from the County Executive -- I've heard the consistency argument,  
13 we're addressing that -- when I stood next to Doug Duncan, I didn't hear about  
14 economic impact, I will ask those questions to make sure that maybe it was set at  
15 another time and I just didn't hear it. But the argument that I heard from them was we  
16 need to be consistent, we are going to offer a bill that's is consistent, and that's what we  
17 are going to try to do. So I just wanted to bring you up to speed on where we're at. Mr.  
18 Leventhal had his light on first, and then I'll turn to you.

19  
20 Councilmember Leventhal,  
21 [sighing heavily] I don't think it's Mr. Hansen's job to estimate the economic impact. I  
22 think we have to go to another source.

23  
24 Council President Perez,  
25 I agree, I couldn't agree with you more.

26  
27 Councilmember Leventhal,  
28 So I don't know that Mr. Hansen's input on the question of whether a chill will be placed  
29 on lending or whether access to credit will be denied for potential homeowners. I don't  
30 really think that Mr. Hansen's is in a position to answer that question.

31  
32 Council President Perez,  
33 Couldn't agree with you more!

34  
35 Councilmember Leventhal,  
36 And I wouldn't ask it of him. I'd like to know the answer, but I think some of these  
37 answers are ultimately unknowable. But I really -- so I'm responding to something you  
38 said after I turned my light on. Tom, I have never known an elected official who was in  
39 such a hurry to throw cold water on his own accomplishments. You have introduced a  
40 bill that has united the community in opposition to predatory lending, you've gotten the  
41 Executive branch to express its support for you, you've gotten your colleagues to work  
42 with you, you've gotten the Committee to approve a bill that is a strong repudiation of  
43 predatory lending. We are about to pass it. All credit goes to you, I don't understand why  
44 you would seek to downplay your own accomplishment. I don't get it. I really don't. I

November 29, 2005



1 mean I'm telling you honestly, I don't know why you want to say we are not putting our  
2 best foot forward. I don't know why you want to say that this is less that what we should  
3 be doing, I...

4  
5 Council President Perez,  
6 Because I feel that way, and I've certainly outlined...

7  
8 Councilmember Leventhal,  
9 ...we have engaged in a -- well, you've got your feelings, you've expressed them at  
10 great length.

11  
12 Council President Perez,  
13 Okay, well, I'll do it again if you're not clear.

14  
15 Councilmember Leventhal,  
16 I'm sure you will, we all look forward to it. We will be sitting right here and we will have  
17 the chance to do it. But my advice to you would be now and has been for months, take  
18 yes for an answer. We are going to pass a good strong bill that you introduced, that I  
19 hope you'll vote for.

20  
21 Council President Perez,  
22 And then -- and I'll give you my advice to you in a moment, which is I think we can do  
23 better, and I have higher expectations for what we can do here in Montgomery County  
24 on this issue. And maybe I've set the bar unrealistically high, but I feel that we can and  
25 must do more. Because I'm concerned about the dark clouds on the horizon that I've  
26 seen in terms of what's happening on the civil rights front. So I'm very happy to join  
27 today and in supporting this bill, but I'm -- we're not done, it's just plain and simple. So if  
28 that's cold water on your own parade, it's because I'm not yet ready to have a parade.  
29 And when we get a bill that I think, or when we get interventions in place, including  
30 perhaps, I hope when we debate disparate impact, we could have someone from the  
31 Executive's office at the table to get their input, I think that would be very useful. Then I'll  
32 be ready to break out of balloons and the marching band. But I'm not quite there yet,  
33 and I respect that you and I have a difference of opinion on that, and we will continue to  
34 be good friends, and good friends sometimes disagree. Mr. Subin.

35  
36 Councilmember Subin,  
37 I'm not sure how to follow that up. You know, the reason Mr. Hansen was asked the  
38 question, the reason the question was directed at Mr. Hansen is because the County  
39 Executive saw fit not to have the proper representatives here today. And so the  
40 question wasn't for Mr. Hansen to answer, but to take back to the Executive, who  
41 hopefully will see fit to participate in the process in the future. I thought that this was a  
42 two-chamber government, but maybe we were wrong. I was hoping that Ms. Shannon  
43 was going to be here, or some representative of the Executive, it didn't have to be Ms.  
44 Shannon, to indicate that I believe that at the end of the day, her argument about

November 29, 2005



1 singling out one area to talk about disparate impact would -- would make it harder for  
2 that office to go back and say disparate impact in employment or housing discrimination  
3 in addition to lending practices. That argument has quite a bit of precedence in the law,  
4 and the thing that we're taught almost on day one about plain language. The court  
5 would simply ask why did you do one and not the others? I am totally dissuaded by the  
6 industry's argument's, totally dissuaded. Totally dissuaded by the bolero argument, that  
7 we will leave Montgomery County, very disingenuous. Rates might go up, okay, if  
8 there's going to be a higher cost. But the protestations of the industry we need to  
9 believe that maybe there is something going on. Now, I think what came out of  
10 Committee were, under the circumstances, was a solid bill, but I understand Mr. Perez's  
11 concerns that the real issue here, whether it is in this arena or employment or housing,  
12 or anything else, is the issue of disparate impact. That is the issue, and to try to state  
13 that there are not problems in those arenas in any sector of this economy is either  
14 naive, or blind, or disingenuous, if not all three. But certainly the folks who have been  
15 fighting these battles for a long time, including the issues on unfair housing and the fair  
16 housing surveys every year indicate that there are problems, there continue to be  
17 problems, show that there is an issue that needs to be addressed. There's also an  
18 adage "When you wish upon a star, be careful, you may get what you ask for." Maybe  
19 today the issue of disparate impact is off the table, but it's off the table because of  
20 technicalities that involve advertising and notice to other communities that would be  
21 affected, and so rather than risk prejudicing a good thing today, it is better to come back  
22 tomorrow heed the warnings, take a -- not politically more conservative, but a legally  
23 more conservative approach, and have a more broad-based bill, that now will include  
24 everything. That's the way to do it because, again, to believe that there are not  
25 problems in Montgomery County is either blind or naive. Those problems are there. And  
26 those problems, as I talked with Mr. Perez prior to today will be addressed. And so, Mr.  
27 President, I don't know if you need a motion or an intent of the Council or what to both,  
28 and I know you don't need a motion to pass the Committee bill because that's  
29 automatically on the table, but to state the intention of this Council and request the staff  
30 that we come back with a disparate impact bill that will be inclusive of everything and  
31 while it may be subject to challenge from a philosophical standpoint in the legal system,  
32 that's avoid the whole issue of intent and plain language. It will be there, everything will  
33 be included. Automobile sales, housing rentals, housing sales, employment, sales of  
34 candy bars, whatever it is, it will be there. And predatory lending will be there also. I  
35 don't want anybody to walk out thinking that the book is being closed on predatory  
36 lending. Chapter One may be over, but when we walk out of here the writing for Chapter  
37 Two will begin. I don't know if you need a motion to that effect or what --!

38  
39 Council President Perez,

40 No, I've already asked and staff is, will begin the preparation of the bill that both you and  
41 I have alluded to. When that's ready, we will introduce it. Okay, Committee  
42 recommendation, as amended. Mr. Denis, you wanted to...

43  
44 Councilmember Denis,



November 29, 2005

1 Yeah, just a few comments, I mean I may be the only member to vote against the bill. I  
2 don't know, but I want to make a few comments and observations about it because I do  
3 think that we can benefit and clearly this is another shoe to drop, but we can benefit  
4 from Executive guidance on this matter, those that have to implement whatever we  
5 pass, I think the Council and the people are entitled to a clear statement of position, and  
6 I'm disappointed we haven't had it to date, and I think the sponsor of the bill, though I  
7 clearly did not share his enthusiasm for the subject matter, but I think he makes a valid  
8 point as to where is the Executive, where has the Executive been, and my own  
9 experience is such that I'm just totally perplexed by it, because I don't ever recall a  
10 situation actually, at any level of government where a department head or senior  
11 Executive individual would not respond to a legislative request when a bill is up for  
12 serious discussion. Very often, you have to sit will and take it and listen to things you  
13 don't want to hear, but that's, that's your job. So I share the frustration in that, and  
14 personally, this Councilmember, I feel like I could have benefited from some clarification  
15 on some of these issues. Mr. Leventhal makes a valid point when he says "Why isn't the  
16 prime sponsor willing to declare victory with the Committee passed bill and go on from  
17 there?" And to which I can only respond having worked with Mr. Perez since he's been  
18 on the Council, that most people might do that, but not Tom Perez, and I respect him  
19 more for it. As to the Executive's position -- I'll go back to the public hearing that we had  
20 almost exactly a year ago. I looked in my file, December 14, it was a night hearing, we  
21 had 30 witnesses. The lead witness was Joe Beach for the Executive, and it doesn't  
22 address disparate impact, but in his testimony he says "We believe this bill points us in  
23 the right direction and is an important step in helping to address the needs of all our  
24 residents." And there was an additional statement from the Executive to that effect. In  
25 response to questions, Mr. Beach said, "May need some revisions." And there was also  
26 testimony that night from the Interagency Fair Housing Commission talking --  
27 recommending that we don't throw out the baby with the bath water, and not all the  
28 subprime loans are predatory, beware of the unintended consequences, and so on.  
29 There was testimony about the DC law that had to be revisited after it was passed  
30 because of problems that arose. And I guess that's, that is what has persuaded me  
31 throughout this discussion, I personally have not heard any credible evidence that there  
32 is what is called predatory lending in Montgomery County. And in the absence of that  
33 evidence I just cannot vote for any version of the bill. I certainly believe that the caveats  
34 that have been expressed in the testimony and in the documents or evidence that we've  
35 received, should give us all pause before we pass any legislation, either the original  
36 legislation or the legislation that has been passed -- recommended by the Committee.

37  
38 Council President Perez,  
39 Mr. Subin.

40  
41 Councilmember Subin,  
42 I am not going to sit in judgment of why or should the Council President, the prime  
43 sponsor of this bill be dancing in the streets because something was passed or not. He  
44 says he is not satisfied, he's not satisfied. Why can't you all leave it at that? That's for



November 29, 2005

1 him to determine. I don't want any of you telling me I should be happy or I should be sad  
2 or I should be upset. Leave it alone.

3  
4 [laughter]

5  
6 Councilmember Subin,

7 Number two, if there is no problem, why all the protestations? If this bill or any disparate  
8 impact bill is simply going to be a belt and suspenders issue, then who cares? But given  
9 the level of protest and the amount of money that was spent in opposition to this, my  
10 ears certainly picked up. If there's no problem what difference does it make? If the  
11 Soviet Union is no longer a threat or is a threat, go ahead and pass whatever  
12 resolutions you want, because there is no Soviet Union to get mad about, or mad back  
13 at you. So you can vote against this, you can be opposed to this, you can be opposed to  
14 whatever comes next, but if the amount of paper that we received on round two and the  
15 amount of money that was spent in opposition to it is any indication, then there is an  
16 issue. It's one of the problems about being around here too long, you look at the  
17 surrogates. And the bigger the pile of opposition from those who would be affected by  
18 something that doesn't exist was huge. It was huge. So that's the answer to that,  
19 Howard. That is the surrogate and Tom did come up with a -- with a huge body of data  
20 to indicate that even if the issue was not disparate impact, it was something that needs  
21 to be looked at. And we looked at it. And we're going to look at it again.

22  
23 Council President Perez,  
24 Ms. Floreen.

25  
26 Councilmember Floreen,

27 Thank you. You know, I signed on to this bill after it had been drafted, and when it was  
28 about to be introduced because of what it is, it's a bill about discrimination in housing,  
29 and that is the point of this conversation. It has been turned into a debate about lending  
30 practices, which actually it's not. It's a bill about discrimination, and why that is the  
31 Council's authority here, to deal with housing policy and to deal with local discriminatory  
32 issues. While I appreciate the advocacy that we've heard a great deal of from the  
33 banking industry and from the proponents of the disparate impact language, I will  
34 support the bill that came out of Committee. I don't think the world would have come to  
35 an end including that language in this bill. I am not persuaded by the issues that have  
36 been presented by the Executive staff that including it here meant you couldn't advance  
37 it elsewhere. It's a fine lawyerly argument, but it's an advocacy position. I'm happy to  
38 take it up in the next session and deal with it across the board, but I'll just remind  
39 everybody here, this is about housing policy and its discrimination with respect to that  
40 policy, and how people have access to the increasingly illusive opportunity in  
41 Montgomery County of owning homes. Whatever we do, no question, it may be in fact  
42 somewhat harder for folks to get loans, but what we do know is that they will be  
43 protected under this legislation, and there will be a very significant stick for folks who,  
44 who attempt to trick, confuse, or mislead folks. As somebody who had a mortgage



November 29, 2005



1 banker come to my house, 10:30 one Sunday night to conclude the resolution of a  
2 refinancing that included rearranged points, I think it would be wrong to say that weren't  
3 practices are there that are employed by unscrupulous people. More often than not is I  
4 suspect unregulated mortgage brokers. The point of this is to address the real  
5 discrimination that I believe occurs in the community and effects access to housing,  
6 that's what this is about, and I do commend the Council President for his line fight on  
7 this issue, and I think we are at the end of this debate. Look forward to the next one.

8  
9 Council President Perez,  
10 Mr. Andrews?

11  
12 Councilmember Andrews,  
13 Thank you. I want to commend Council President and Professor Perez for his  
14 leadership on this. It's not an issue, I think, that most Councilmembers had focused on  
15 when they were elected three years ago, so it was a new issue for many of us. And I  
16 think Council President made a good point and that is if you can't prove something the  
17 fine doesn't mean much, and I think that is a critical point, and we'll have to decide  
18 whether that truly is a provable case under the -- if there's no disparate impact provision  
19 there. But I will say although this bill will not have a disparity impact provision I think the  
20 bill has had an impact in the amount of spending that has been waged against that  
21 provision. Quite a disparate impact there, I bet, if you look at that, and how much has  
22 been spent to defeat that provision. So you've achieved that goal, Mr. Perez.

23  
24 Council President Perez,  
25 Thank you. Okay, Madam Clerk, I think we exhausted ourselves for today.

26  
27 Council Clerk,  
28 Mr. Denis?

29  
30 Councilmember Denis,  
31 No.

32  
33 Council Clerk,  
34 Ms. Floreen?

35  
36 Councilmember Floreen,  
37 Yes.

38  
39 Council Clerk,  
40 Mr. Subin?

41  
42 Councilmember Subin,  
43 Yes.



November 29, 2005

1 Council Clerk,  
2 Mr. Silverman?

3  
4 Councilmember Silverman,  
5 Yes.

6  
7 Council Clerk,  
8 Mr. Knapp?

9  
10 Councilmember Knapp,  
11 No.

12  
13 Council Clerk,  
14 Mr. Andrews?

15  
16 Councilmember Andrews,  
17 Yes.

18  
19 Council Clerk,  
20 Ms. Praisner?

21  
22 Councilmember Praisner,  
23 Yes.

24  
25 Council Clerk,  
26 Mr. Leventhal?

27  
28 Councilmember Leventhal,  
29 Yes.

30  
31 Council Clerk,  
32 Mr. Perez?

33  
34 Council President Perez,  
35 Yes. Bill passes 7-2. Mr. Leventhal.

36  
37 Councilmember Leventhal,  
38 Mr. President, I may want to lay down my marker right now, you and I have been very  
39 scrupulous about not discussing the content of this matter because together, we  
40 constitute a majority of the Committee of it of jurisdiction, we've been extremely careful  
41 about not violating the open meetings law on this matter.

42  
43 Council President Perez,  
44 On all matters.

November 29, 2005



Councilmember Leventhal,  
On all matters. On all matters.

Councilmember Silverman,  
Well, there was that time 16 months ago, but that's...

Councilmember Leventhal,  
I am asking for the simple consideration, not face to face because we can't do that now, either, of having the bill that you are asking staff -- which will come before my Committee, I would like to be consulted on this matter through staff, I would like to understand the content, I would not like to be placed in the position of learning after the fact that legislation regarding discrimination and civil rights is pending before the Council and will come before my Committee. I would like to work with you through staff on this matter, I did not have that opportunity with respect to this lending bill -- which is a lending bill, let me just say to any colleague who's suggested it is anything other than a lending bill, the word lending, lending, lending, appears throughout the bill. So let's be real clear that it is absolutely a lending bill. But I am wide open to a thorough and constructive discussion at any time about how to strengthen the protection of civil rights in Montgomery County. I'm very, very disappointed that you and I have come to a place where we are not working arm in arm on the matter of civil rights and discrimination, and I am laying down a marker right now, I will have some role as a Committee Chairman and some people are betting I may even preside over this Council in the near term, and I would hope that staff would work with me and be in communication with me so that we are not at odds with each other on an issue on which I know you and I feel very, very deeply. I did not have that opportunity with this lending bill.

Council President Perez,  
I will do exactly what we did before, which is we will prepare a draft, and we will circulate the draft with a cover memo, and we will invite your input and hopefully cosponsorship, and if there are tweaks to be made, we will make those tweaks before, and then if there are additional tweaks to be made in the Committee, we will do that as well. I won't belabor the point.

Councilmember Leventhal,  
That's a creative reading of history, Mr. President.

Council President Perez,  
I can show you the memo we sent around, and I'm happy to do that.

Councilmember Denis,  
Point of clarification, Mr. President.

Council President Perez,



November 29, 2005

1 Yes, Mr. Denis.

2  
3 Councilmember Denis,

4 And I raise this, one of the reasons is that next Tuesday, we may have some changes  
5 here, and I just want to make sure that I heard this correctly, or the interpretation is the  
6 correct interpretation under the open meetings law, it's always been my understanding  
7 when a bill comes from the Committee to the Council that members of the Committee  
8 can talk to each other about the contents of the legislation.  
9

10 Councilmember Leventhal,  
11 After it was out of Committee.

12  
13 Councilmember Denis,  
14 Yes.

15  
16 Councilmember Leventhal,  
17 Right, but there were months before the Committee had acted in which we couldn't have  
18 a conversation with each other.  
19

20 Councilmember Denis,  
21 Okay, thank you.  
22

23 Council President Perez,  
24 Anything else? We're going to go right to Royce Hanson downstairs on the sixth floor,  
25 and I frankly believe that we are going -- we'll probably be with Mr. Hansen for about an  
26 hour, and I frankly do not believe that we will have sufficient value added to a discussion  
27 of this, and I was hoping we would get through this sooner, and I am in large part  
28 responsible for that, and our friends in the Executive Branch were...  
29

30 Unidentified,  
31 [INAUDIBLE]  
32

33 Council President Perez,  
34 Yes, so I think we will postpone the Committee consideration of the impervious issue  
35 but, Mr. Silverman?  
36

37 Councilmember Silverman,  
38 Yeah, that's fine. There was, there is a meeting of the PHED/T&E Committee scheduled  
39 this afternoon on continuing our discussion about PIFs and impervious caps, but since  
40 we will be tied up until 4:30, unfortunately there's not a point in doing that, and we have  
41 a public hearing this evening as well, so we will end up with that joint committee  
42 meeting being rescheduled.  
43